

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1908.

No. 1941.

582

No. 19, SPECIAL CALENDAR.

JAMES RUDOLPH GARFIELD, SECRETARY OF THE
INTERIOR OF THE UNITED STATES, APPELLANT,

vs.

THE UNITED STATES OF AMERICA UPON THE RELATION OF EUGENE E. STEVENS, THOMAS R. HARNEY, MARTHA R. HARNEY, AND EVELYN STEVENS, BY MARTHA G. HARNEY, HER GUARDIAN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED AUGUST 14, 1908.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1908.

No. 1941.

No. 19, SPECIAL CALENDAR.

JAMES RUDOLPH GARFIELD, SECRETARY OF THE
INTERIOR, APPELLANT,

vs.

THE UNITED STATES OF AMERICA UPON THE RELA-
TION OF EUGENE E. STEVENS, THOMAS R. HARNEY,
MARTHA R. HARNEY, AND EVELYN STEVENS, BY
MARTHA G. HARNEY, HER GUARDIAN.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

INDEX.

	Original.	Print.
Caption	a	1
Petition for writ of mandamus.....	1	1
Exhibit "A"—Charges.....	12	7
"B"—Answer to charges.....	27	18
"C"—Argument of Henry E. Davis, affidavits, &c....	50	32
"D"—Memoranda on behalf of respondents.....	96	53
"E"—Application for reconsideration.....	203	123
Rule to show cause.....	230	139
Marshal's return.....	230	139
Demurrer.....	231	139
Opinion	234	141
Amended answer.....	236	142
Respondent's Exhibit No. 1—Application for admission to practice.....	260	154
No. 2—Oath.....	261	155
No. 3—Certificate.....	262	155
No. 4—Letter, June 12, 1897.....	263	156

	Original.	Print.
Respondent's Exhibit No. 5—Letter, June 16, 1897.....	266	158
No. 6—Letter, July 7, 1897.....	268	159
No. 7—Harney letter, June 22, 1897....	269	159
No. 8—Affidavit of Milo B. Stevens <i>et al.</i>	273	162
No. 9—Notice of death of Milo B. Stevens, &c.....	276	164
No. 10—Letter to office, July 12, 1897..	277	164
No. 11—Affidavit of Martha G. Stevens.	278	165
No. 12—Affidavit of Stevens & Harney.	279	165
No. 13—Marriage certificate.....	280	166
No. 14—Application for letters of admin- istration.....	281	167
No. 15—Inventory, &c.....	283	168
No. 16—Vouchers.....	284	169
No. 17—Charges of improper practice..	285	170
No. 18—Letter of acknowledgment and answer to charges.....	303	182
No. 19—Papers in disbarment proceed- ings.....	392	225
No. 20—Letter of Commissioner, June 14, 1907	552	304
No. 21—Letter of Commissioner, June 25, 1907	554	304
Memorandum: Respondent's Exhibits Nos. 22 and 23 are Re- lator's Exhibits "D" and "E."	558	306
Respondent's Exhibit No. 24—Special examiner's report.....	559	307
No. 25—Order of disbarment.....	586	323
No. 26—Execution of order postponed..	587	323
No. 27—Assignment of attorneyship....	588	324
No. 28—Letter of Bommhardt <i>et al.</i> , June 1, 1908.....	589	325
No. 29—Letter of Department, June 3, 1908.....	590	325
Order requiring writ of mandamus to issue and to restore relators to practice before the Department of the Interior.....	591	326
Appeal noted.....	591	326
Order fixing penalty of bond to act as a supersedeas; exception to order	592	327
Writ of mandamus.....	593	327
Marshal's return to writ.....	594	328
Endorsement of Frank Pierce, acting Secretary, to writ.....	595	328
Notice that appeal is taken by direction of the Attorney General and Secretary of the Interior and is to be regarded as an United States case.....	596	329
Respondent's directions to clerk for preparation of record.....	597	329
Relators' directions to clerk for preparation of record.....	599	330
Clerk's certificate.....	600	331

In the Court of Appeals of the District of Columbia.

No. 1941.

J. R. GARFIELD, Sec'y, &c., Appellant,
vs.
THE U. S. OF A. *ex Rel.* EUGENE E. STEVENS ET AL.

a Supreme Court of the District of Columbia.

At Law. No. 50621.

THE UNITED STATES *ex Relatione* EUGENE E. STEVENS, THOMAS R. HARNEY, MARTHA R. HARNEY, and EVELYN STEVENS, by MARTHA G. HARNEY, Her Guardian, Relators,

vs.
JAMES R. GARFIELD, Secretary of the Interior of the United States,
Respondent.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Petition for Writ of Mandamus.*

Filed June 1, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50621.

THE UNITED STATES OF AMERICA upon the Relation of EUGENE E. STEVENS, THOMAS R. HARNEY, MARTHA R. HARNEY, and EVELYN STEVENS, by MARTHA G. HARNEY, Her Guardian, Relators,

vs.
JAMES R. GARFIELD, Secretary of the Interior of the United States,
Respondent.

The petition of the above named relators shows as follows:

1. The relators are citizens of the United States and residents respectively as follows: The relator Eugene E. Stevens, in the county of Montgomery, State of Maryland, and the other relators in the

District of Columbia; and the said relators file this their petition in their own right as co-partners constituting the firm of Milo B. Stevens & Company, doing business in the said District of Columbia.

2. The respondent is a citizen of the United States, and a resident of the State of Ohio, but temporarily resident in the District of Columbia; and is and was on the thirteenth day of April, 1907, and continuously since has been the Secretary of the Interior of the United States, duly qualified and acting as such, and is sued as such.

3. On towit, the — day of March, 1889, and continuously thereafter until towit, the 23rd day of November, 1896, one Milo B. Stevens and the relator Eugene E. Stevens were co-partners practicing before the Department of the Interior and the several bureaus thereof as attorneys in respect, among others, of claims before the Bureau of Pensions and the Patent Office of the Department of the Interior of the United States, having been duly admitted as such practitioners and being duly qualified and in good standing as such, and carrying on their business under the firm name and style of Milo B. Stevens & Company.

4. On towit, the twenty-third day of November, 1896, the said Milo B. Stevens died, and thereafter and on towit, the second day of December, 1896, the relator Eugene E. Stevens, Thomas R. Harney Martha G. Harney, then Martha G. Stevens, widow of the said Milo B. Stevens, and Evelyn Stevens by her guardian the said Martha G. Harney, formerly Stevens, became and since continuously have been copartners under the firm name and style of Milo B. Stevens & Company, as aforesaid, practicing as attorneys before said Department of the Interior and the bureaus thereof, as aforesaid.

5. Neither the relator Martha G. Harney nor the relator Evelyn Stevens nor the said Martha G. Harney as guardian of her, the said Evelyn Stevens, has been formally admitted to practice before said Department of the Interior and its bureaus as aforesaid; but each of the relators Eugene E. Stevens and Thomas R. Harney was duly and formally admitted so to practice as attorney before the said Department and bureaus, and as such, with the knowledge of the officials of the said Department, including the respondent, have in their own behalf and in the behalf of the relators Martha G. Harney and Evelyn Stevens, as copartners as aforesaid, been since, towit, the said second day of December, 1896, carrying on before the said Department and bureaus the business of attorneys as aforesaid, and all of the relators have by the said Department and bureaus been since the said last mentioned date recognized as the constituent members of the said firm of Milo B. Stevens & Company, and interested in and partaking of the emoluments and profits arising out of the business of the said firm as attorneys and practitioners before the said Department and bureaus, as aforesaid.

6. By Section 5 of an Act of the Congress of the United States of July 4, 1884, it was enacted as follows:

"Sec. 5. That the Secretary of the Interior may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department, and may require such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good moral character and in good repute, possessed of the necessary

qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their claims, and such Secretary may, after notice and opportunity for a hearing, suspend or exclude from further practice

4 before his Department any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud in any manner deceive, mislead, or threaten any claimant, or prospective claimant, by word, circular, letter, or by advertisement."

7. By rule or regulation numbered 9, governing the recognition of agents, attorneys and other persons to represent claimants before the Department of the Interior and the bureaus thereof, adopted and promulgated under authority of and in conformity with the Act aforesaid, it is, and at all times hereinafter mentioned was, provided, as follows:

"Whenever an attorney or agent is charged with improper practices in connection with any matter before a bureau of this Department, the head of such bureau shall investigate the charge, giving the attorney or agent due notice, together with a statement of the charge against him, and allow him an opportunity to be heard in the premises. When the investigation shall have been concluded all the papers shall be forwarded to the Department with a statement of the facts and such recommendations as to disbarment from practice as the head of the bureau may deem proper, for the consideration of the Secretary of the Interior. During the investigation the attorney or agent will be recognized as such, unless for special reason the Secretary shall order his suspension from practice."

5 8. On towit, the thirteenth day of April, 1907, there was served upon the relators Eugene E. Stevens and Thomas R. Harney, and each of them, by the Commissioner of Pensions of the United States, a citation, so-called, whereof a true copy marked "Exhibit A" is hereto annexed and prayed to be taken as part hereof; and thereafter the said relators Stevens and Harney filed with the said Commissioner of Pensions a reply or answer to the said citation, so-called, a true copy whereof marked "Exhibit B" is hereto annexed and prayed to be taken as part hereof; and thereafter, and in support of their answer, the said relators filed with the said Commissioner of Pensions certain evidence in support of allegations in their answers aforesaid, a true copy whereof marked "Exhibit C" is hereto annexed and prayed to be taken as part hereof.

9. After the filing of their answer and evidence in support thereof, as aforesaid, the said relators Eugene E. Stevens and Thomas R. Harney, by their counsel, were orally heard by the respondent on the charges aforesaid, and subsequently submitted to the said respondent an argument in writing, whereof a copy marked "Exhibit D" is filed herewith and prayed to be taken as part hereof.

10. Thereafter the respondent, upon consideration of the citation, so-called, answer, testimony and argument aforesaid, made and promulgated an order purporting to disbar the relators Eugene E. Stevens, Thomas R. Harney, and the firm of Milo B. Stevens &

6 Company, from practicing before the said Department of the Interior or any of its bureaus or offices, as follows:

"DEPARTMENT OF THE INTERIOR,
WASHINGTON, May 1, 1908.

"The Commissioner of Pensions.

"SIR: Your letters have been received recommending that Eugene E. Stevens and Thomas R. Harney of Washington, D. C., be disbarred from practice before the Pension Bureau for unprofessional conduct, for which they have been cited to show cause by you and have submitted an unsatisfactory answer.

"After careful consideration of your recommendation, the testimony in the case, the arguments of counsel, and the authorities cited by them, I am convinced that the said Eugene E. Stevens and Thomas R. Harney, have transacted with their clients a business which is clearly incompatible with their obligations as attorneys, and with the laws, rules and regulations under which they were recognized and permitted to represent claimants before this Department and its bureaus. The circumstances in this case are not such as to warrant their continued recognition as attorneys, and it is therefore, hereby ordered that the said Eugene E. Stevens, Thomas R. Harney, and the firm of Milo B. Stevens & Co., be no longer recognized as attorneys or agents in the prosecution of any claim or other matter before this Department or any of its bureaus or offices.

7 "The papers appertaining to the files of your office are herewith returned. You will inform Messrs. Stevens and Harney of this action.

Very respectfully,
(Signed)

J. R. GARFIELD, *Secretary.*"

11. Thereafter the said last mentioned relators filed with the respondent an application for a reconsideration of his action as aforesaid, a true copy whereof, marked "Exhibit E" is filed herewith and prayed to be taken as part hereof. Notwithstanding which said application, the respondent has declined and refuses, and still declines and refuses, to reconsider his action as aforesaid, and has notified the said relators and the said firm of Milo B. Stevens & Company, through their counsel, that his, the respondent's said action as indicated and expressed in his order aforesaid is and must be deemed and taken to be final, and has refused and refuses to recognize the relators, or any of them, as attorneys or practitioners before the said Department of the Interior or any of its bureaus or offices; and unless otherwise directed by this court will continue so to decline and refuse.

12. As in and by the answer of the relators Eugene E. Stevens and Thomas R. Harney aforesaid appears, the said relators relied in part in defense to the charges in the said so-called citation supposed to be made upon an alleged practice of the purchase by attorneys and practitioners before the Department of the Interior, of purchasing
8 bounty land warrants from their clients, which practice is and was within the full knowledge of the officials of the said Department, and had been known to them for many

years, and suffered and permitted without reprobation or condemnation whatsoever, so that the same had become and was known as a kind of common law custom or usage in the transaction of such business and in the practice in such class of cases; yet, nevertheless, upon the *ex parte* investigation and report of certain subordinate officials of said Department, and without opportunity to the relators, or any of them, to participate in such investigation or to support by the production of witnesses their allegations in the premises, the respondent decided the contention of the relators in that behalf adversely to them, and, in part, reached and rested his conclusion and decision in the premises upon the assumption and pretended adjudication that such practice did not exist and had not existed; by reason whereof, in respect of such material contention in that behalf, the relators were deprived of due process of law and of the opportunity to make good their defense in respect of their contention, and, besides, were subjected in effect to punishment as for an *ex post facto* offense, contrary to the constitutional and legal rights of the relators.

13. Since and during the association of the relators as copartners as aforesaid, the relators through the expenditure of large sums of money in advertising and otherwise, and of much time and great labor, have built up a large and lucrative business and practice before the said Department and its bureaus and offices, and, as
9 attorneys, practitioners and agents as aforesaid, have pending before the same a great number of applications for pensions and for patents, to wit, more than forty-two thousand (42,000) for pensions and more than two hundred and fifty (250) for patents, the fees in respect of which have in large part been earned, and in some cases fully earned, of the benefit of all which the said order of the respondent, if allowed to be and remain effective and final, will deprive the relators, to their damage, many thousands of dollars, besides which the said order, if so allowed to be and remain effective and final, will not only debar the relators from further practice or recognition as aforesaid before the said Department, bureaus and offices, but will also utterly destroy their said business and actually confiscate the fruits and value thereof.

14. As hereinbefore appears, neither the relator Martha G. Harney nor the relator Evelyn Stevens, was cited or summoned to appear to the charges aforesaid, or any of them, and none of the relators was afforded or allowed opportunity to be confronted by the witnesses produced in support of the said charges, or to cross examine the said witnesses, or to refute their testimony by testimony produced in opposition to the testimony of such witnesses; the said charges are not within the contemplation of the Act aforesaid, and so are and were not within the jurisdiction of the respondent; the said charges, instead of being specific in respect of alleged offense, are and were loose, argumentative and inferential; the so-called testimony relied upon in support of the said charges is and was
10 in direct disregard of the settled rules and law of evidence; and all and every the proceedings against the relators upon which the respondent relied in making his order aforesaid, and upon which the said order was made and depends, are and were be-

yond the jurisdiction of the respondent to consider, without the purview of the law, irregular and wholly insufficient to justify and support the action of the respondent in the premises, and by reason of the premises, respondent has assumed to deprive the relators of their offices as attorneys and practitioners as aforesaid, and the rights, privileges and emoluments lawfully thereto appertaining, without due process of law and in violation of their lawful rights.

15. The relators have no right of appeal or writ of error from the action of the respondent as aforesaid, and have no relief in the premises save through the writ of mandamus; wherefore they pray that such writ may issue to the respondent, commanding him to set aside and vacate his said order and to restore the relators and each of them to their rights and privileges as the same were before the said action of the respondent, and his order aforesaid, and that the relators may have such other and further relief in the premises as the nature of their case may require, and that to such end all necessary proceedings may be had and orders made.

EUGENE E. STEVENS.
 THOMAS R. HARNEY.
 MARTHA G. HARNEY.
 MARTHA G. HARNEY,
Gdn. of Evelyn Stevens.

HENRY E. DAVIS,
 WM. T. S. CURTIS,
 BARNARD & JOHNSON,
Attorneys for Relators.

11 DISTRICT OF COLUMBIA, ss:

Before me, a notary public in and for the District aforesaid, personally appeared Eugene E. Stevens, Thomas R. Harney and Martha G. Harney, each of whom being by me first duly sworn, deposes and says that he or she has read the foregoing petition and knows the contents thereof; and that the statements therein made of his or her own knowledge are true, and those stated on information or belief, he or she believes to be true.

EUGENE E. STEVENS.
 THOMAS R. HARNEY.
 MARTHA G. HARNEY.

Subscribed and sworn to before me this 1st day of June, 1908.

[NOTARIAL SEAL.]

FRANK D. FAWCETT,
Notary Public, D. C.

12

EXHIBIT "A."

Filed June 1, 1908.

50621.

3-1868.

Law Division.

JEM.

DEPARTMENT OF THE INTERIOR,
BUREAU OF PENSIONS,
WASHINGTON, D. C., *April 13, 1907.*

Eugene E. Stevens and Thomas R. Harney, doing business under the firm name of Milo B. Stevens & Co., attorneys, Washington, D. C.

SIRS: You, and each of you, were, on the dates herein mentioned, entitled to practice before the Bureau of Pensions, of the Department of the Interior, and were engaging in such practice under the firm name of Milo B. Stevens & Company. As such attorneys, you, and each of you, are hereby charged with improper, unprofessional and illegal conduct in connection with each claim for military
13 bounty land jointly filed by you and mentioned in this letter, in resorting to the methods and in committing the specific offenses set forth below.

Case of META G. THORNTON.

Original No. 100,874.

On February 18, 1904, you filed in this Bureau an application and fee contracts executed by Meta G. Thornton, widow of Henry F. Thornton, late of the 1st Virginia Volunteers, Mexican war.

On May 12, 1904, during the pendency of this claim, you wrote the following letter to your said client:

"Office of Milo B. Stevens & Company, Solicitors of Claims and Patents, Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

H-W.

WASHINGTON, *May 12, 1904.*

Mrs. Meta G. Thornton, 328 N. Lewiston St., Lexington, Ky.

MADAM: We write to say that we are still awaiting action of the Pension Bureau in your bounty-land case. It will probably be some little time yet before it is settled, but as soon as it is settled we will notify you.

By the way, do you care to sell the bounty-land warrant in the event of our securing it for you? If so, we believe that we can find a purchaser for it, provided you are willing to accept a reasonable offer for it.

We presume that you understand that the warrant does not call for any particular land. It simply gives you the right to take up 160 acres of government land if you can find any land at this late day that you would care to enter with it. It is not likely that you will want to use the warrant yourself and hence it will probably be to your interest to sell it for a cash consideration. We advise you to sell it, but of course you can use your own pleasure in the matter. You can probably get as much as \$1.25 per acre for the warrant, which will make the warrant bring you \$200 in cash. Do you care to sell it? If so, let us hear from you promptly about it.

Very respectfully,
(Signed)

MILO B. STEVENS & CO."

Your statement in said letter that your client could probably get as much as \$1.25 per acre for the warrant was misleading, and it is charged that when you wrote this letter you well knew that if you then had the warrant you could have sold the same for not less than \$3 per acre.

Said claim was rejected on May 27, 1904, and you were so advised. Thereafter you appealed from the action of this Bureau in the premises and thereafter, on April 5, 1905, you filed in the Department of the Interior a motion for reconsideration in the form of a printed brief, consisting of sixteen (16) pages and one (1) cover. At the time that this brief was printed it was not the practice of the Department of the Interior to require that such briefs be furnished, nor has it at any time been the practice of said Department to require that appeals from the action of this Bureau be printed. Said brief was not printed by reason of any rule or requirement of the Department, and was not printed in the interest of your said client, but was printed for the purpose of exploiting your business as is fully shown by your own use of said brief.

On April 25, 1905, you wrote a letter to your said client which reads as follows:

"Office of Milo B. Stevens & Company, Solicitors of Claims and Patents, Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

H-W.

WASHINGTON, April 25, 1905.

Mrs. Meta G. Thornton, Lexington, Ky.

MADAM: We have your favor of the 19th instant in which you decline to accept a less sum than \$200 for the bounty-land warrant, provided we are successful in securing it for you. We presume that you understand that our work in the case alone, if we charged for

15 it in accordance with the practice of lawyers, would be at least \$150. When we made the contract with you for the purchase of the warrant we had no idea that the claim was going to be rejected, nor had we any idea that we were going to be subjected to the expense of appealing it three times to the Honorable Secretary of the Interior. The printer's bill, alone, is about equal to the fee that you contracted to pay us.

It is possible that you have not heretofore understood these matters and we have, therefore, concluded to write you again about it. We hope under the circumstances that you will consent to name a more reasonable sum for the warrant in the event that we are successful in securing it for you. We think you ought to do it and we think you will do it.

Very respectfully,
(Signed)

MILO B. STEVENS & CO."

At the time that you, for your own purpose, procured the motion for reconsideration above mentioned to be printed, the customary price for a single brief of that character, could be completed in 36 hours, was \$1 per page and \$2 per cover; and if you had paid the highest price for the printing of said brief, the expense thereof would not have exceeded the sum of \$18, and the only other printed matter filed by you in connection with the claim was one declaration and two forms for affidavits and two forms for fee agreements, therefore, the statements contained in your letter of April 25, 1905, quoted above, to the effect that the printer's bill alone is about equal to the fee that your client contracted to pay you was and is false and misleading.

The claim was finally rejected and no warrant was issued.

Case of MARY E. EATON.

Warrant No. 115,693-160-55.

You were attorneys of record before this Bureau and the Department of the Interior when, on October 26, 1904, you filed a declaration executed by Mary E. Eaton, widow of Thomas Eaton, late of U. S. S. "Warren" (1845-47), and duplicate articles of agreement executed by said client. You secured Mr. Henry Hollyday, Jr., of Easton, Md., to act as your correspondent in connection with said case, and on April 11, 1905, you wrote a letter to Mr. Holly-
16 day which reads as follows:

"Office of Milo B. Stevens & Company, Solicitors of Claims and Patents, Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

H-W.

WASHINGTON, April 11, 1905.

Col. Henry Hollyday, Jr., Easton, Md.

DEAR SIR: We have heretofore had some correspondence with you concerning the bounty-land matter of Mrs. Mary Eaton, and we

write to say that we were very much disappointed when her claim was rejected. When the claim was filed, and for some time thereafter, it was clearly allowable under the practice that had obtained in the Pension Bureau since the year 1855. The Interior Department, however, on December 19, 1904, rendered a decision to the effect that in order for the widow to be entitled to a bounty-land warrant under the act of March 3, 1855, she must have been the widow of the soldier or sailor on March 3, 1855. Under that decision the Pension Bureau took up the case of Mrs. Eaton and rejected it. We have, however, filed an appeal in the matter and it will probably be some time yet before a decision is rendered.

Inasmuch as you have shown so much interest in the case of Mrs. Eaton, we have concluded to send you by this day's mail a printed copy of our brief filed in the bounty-land case of the widow of Henry Thornton. The same question was involved in that case as is involved in the case of Mrs. Eaton.

In the Thornton case, like in the Eaton case, our fees, if we are successful, will be \$25, and that will not pay the cost of the printed brief in the Thornton case.

We intend to follow up the appeals in both cases even though we lose money by doing it. Mrs. Thornton has agreed that if we are successful she will sell the warrant to us for a very nominal consideration. We have not asked Mrs. Eaton to do this, but it has occurred to us that perhaps you may not be unwilling to submit the matter to her and have her state the lowest cash price she will accept for the warrant if we finally succeed in getting it for her. You will no doubt recognize the reasonableness of this proposition. We did think of writing her direct on the subject, but inasmuch as you have been attending to the matter for her at that end of the line, we deemed it but courteous to take up the matter through you.

Very respectfully,
(Signed)

MILO B. STEVENS & CO."

You forwarded to Henry Hollyday, Jr., a copy of your printed brief in the Meta E. Thornton case, and thereby applied said brief to the exact purpose for which you originally intended it.

The claim was allowed and the warrant was issued to Mary E. Eaton, your client, on August 28, 1905. On September 8, 1905,
17 you presented at this Bureau an order signed by the warrantee to deliver the warrant to you, and the same was delivered to you on that date, and on the same day you caused to be endorsed upon said warrant a form of assignment thereof to Thomas R. Harney, a member of your firm, and transmitted said warrant to Mr. Hollyday with a letter requesting him to cause the warrantee to make her cross marks to the assignment, to have two attesting witnesses sign to the left of her signature; to have the assignment acknowledged before an officer who has a seal; and to forward the warrant to the Riggs National Bank, Washington, D. C., with a letter instructing said bank to deliver the warrant to you upon the payment of \$200, you offering, in said letter, to pay the bank charges.

The warrant was so assigned and was sent to said bank; and said bank, on your behalf, paid to your client, the warrantee, the sum of

\$200, which amount was received by her on September 14, 1905, and said warrant was subsequently sold to Angus J. Conoly, of Perry, Taylor County, Florida, who testifies that he never paid less than \$3.60 nor more than \$6.50 per acre and commissions, and that at the time he purchased warrant No. 115,693, the price was \$4.25.

In your letter of April 11, 1905, above quoted, you made misleading and false statements with reference to the cost of the printed brief in the case of Meta G. Thornton.

Case of LETITIA J. HICKMAN.

Warrant No. 115,698-160-55.

In your capacities as such attorneys, on May 13, 1904, you, jointly, filed in this Bureau a declaration and duplicate articles of agreement for fee executed by Letitia J. Hickman of St. Joseph, Missouri, child of Nathan Frakes, late of Captain Thomas Morris's company, Kentucky Volunteers, war of 1812, and on May 13, 1904, you wrote a letter to your client, Mrs. Hickman the last paragraph of which reads as follows:

17½ "In the event that we secure the bounty-land warrant for you, are you willing to sell it to us for \$200 cash? We consider this a very fair offer for it."

On September 15, 1904, you wrote another letter to Mrs. Hickman in which you state, among other things:

"Please reply promptly to this letter, giving us full and correct answers to each question asked therein; and let us know whether you will accept our offer of \$200 for the assignment of the warrant to us in event we succeed in securing one for you."

On October 4, 1904, you sold the bounty-land warrant of Harriot S. Bacot, warrant No. 52,734-160-55, for the sum of \$510, and on the same date, you wrote to your client, Mrs. Hickman, stating:

"If we succeed in securing the warrant for you we are willing to pay you \$300 for it, less our fee of \$25. This is a pretty high price for the warrant, but we will pay that amount for it, provided you and your daughter will see Mr. Wade and have him assist all of us in trying to get together the proofs necessary to establish your title to the warrant."

On the same date, October 4, 1904, you wrote a letter to Mr. Robert H. Wade, a notary public, at St. Joseph, Missouri, with reference to this case, suggesting that:

"We would like to have you represent us in our endeavor to complete this case and we are perfectly willing to pay your reasonable charges. We have written to her to call on you with her daughter and to give you the information called for in our letter of May 13th."

and, thereafter, on the dates given, you wrote letters to said Robert H. Wade, in which you made the following statements relative to this case:

November 29, 1904.

"It is going to be a little difficult to establish a case, but we are

willing to undertake it provided you are willing to make your fee, like our own, dependent upon success. It is an exceedingly difficult case and we are by no means anxious to proceed with it unless Mrs. Hickman is willing to give her active cooperation. * * * You see what sort of a case we are engaged in and as the law makes our fee of \$25 dependent upon success we are not willing to advance any money for expenses at that end of the line. If Mrs. Hickman is willing, however, to reimburse you and you are willing to represent us for a part of our fee and make the same dependent upon success, it is believed that we may be able to establish the case.

Mrs. Hickman has demanded that we pay her \$300 for the warrant if we succeed in securing it. That was an unreasonable demand, especially in the light of the obstacles to be overcome in the prosecution of the case. She ought to be willing to accept \$200, and we wish that you would submit the matter to her again. If she
 18 is willing to do that we are willing to treat you liberally in the matter of compensation in the event of success in both cases."

On December 13, 1904:

"We wish that you would take up with Mrs. Hickman again the matter of the price she is to receive for the land warrant in the event of our being able to secure it for her. See the last paragraph of our letter of November 29th. We think she is inclined to be unreasonable in her demands, especially in view of the great amount of work involved. See if you cannot make a better arrangement with her."

December 23, 1904:

"We note with interest what you say about the price of the warrant. We appreciate your situation in the matter and we think we can safely leave it in your hands. When we first canvassed the case we had no idea that we were going to encounter so many obstacles or else we would never * * * have made any such offer to Mrs. Hickman for the warrant. You can no doubt impress this matter upon her and bring about a compromise on the question of price to be paid for the warrant."

January 21, 1905:

"We note with pleasure that Mrs. Hickman has consented to accept \$250 instead of \$300 for the bounty-land warrant in the event of our securing it for her. We have no doubt that you have made the best bargain possible with her and yet we think she ought to have consented to take \$200. We are well pleased with the manner in which you have represented us in this case, and just as the assignment of the warrant is made to us, we will take pleasure in making settlement with you for your services."

March 24, 1905:

"We wish that you would acquaint Mrs. Hickman with the situation so that she may appreciate the difficulties that we have encountered. We believe that under the circumstances she ought to consent to sell us the warrant, if we finally succeed in getting it at a

much less price than she has heretofore named. Submit the matter to her, for us, please."

April 3, 1905:

We think that she ought to be willing to accept a very nominal sum for the bounty-land warrant if we finally succeed in winning the case on appeal. We are taking all the risks, and in view of that fact, we think that she ought to be willing to sell us the warrant, if we are ever successful in securing it for her at a very nominal price."

April 8, 1905:

We have your favor of the 5th instant concerning the bounty-land warrant of Mrs. Hickman, but we cannot say that we quite understand what you mean when you say "she offers to take \$75 cash. If you do not think this is low enough, let me know and send your offer."

We presume that you understand that no one would think of paying \$75 or any other amount for the prospect of securing the warrant."

19 April 14, 1905:

"We have your favor of the 10th instant in the Hickman matter, if we understand you correctly Mrs. Hickman is willing to accept \$75 for the bounty-land warrant, payable when it is properly assigned to us provided we are successful in securing it for her. The \$75 is to be paid to her free of all charges. In other words we are not to charge her anything for our services in the matter. * * * Kindly have Mrs. Hickman sign and date the inclosed agreement and return it to us."

July 11, 1905:

"It will no doubt be gratifying to you as well as to Mrs. Hickman to know that our third appeal in the bounty-land case of Thornton, was sustained by the Hon. Secretary of the Interior. He reversed the action of the Pension Bureau and he also reversed his two former decisions. In view of the last decision we will be able, we believe, to have Mrs. Hickman's case allowed."

The claim was allowed and the warrant was issued on August 28, 1905, and on September 5, 1905, you wrote a letter to said Robert H. Wade, in which you stated, among other things:

"We are sending you herewith an order on the Commissioner of Pensions for Mrs. Hickman to sign, date and return to us. We will present the order and secure the bounty-land warrant, and then we will prepare a proper assignment on the back of it to be executed by Mrs. Hickman. The warrant will then be sent to you for Mrs. Hickman to execute the assignment and then you can send it to the Riggs National Bank, Washington, D. C., with instructions to the bank to deliver it to us upon our first paying the bank seventy-five dollars (\$75) for Mrs. Hickman. At the same time we will make prompt remittance to you."

On September 11, 1905, the warrant was handed to you at this Bureau as the attorneys of record for your client, Letitia J. Hickman,

and, on that date, you wrote a letter to said Robert H. Wade transmitting said warrant with a form for an assignment endorsed thereon, and with instructions as to how said assignment should be executed by your client, adding "that the warrant might then be sent to the Riggs National Bank, Washington, D. C., with instructions to the bank to deliver the warrant to you upon the payment of the sum of \$75 for Mrs. Hickman, or if satisfactory to Mrs. Hickman, the warrant could be sent to you direct and you would then send her a certified check for the amount; and in this letter you also asked Mr. Wade to state the amount which he would be willing to accept for his services in connection with this case to date.

20 Your agent, said Robert H. Wade, in compliance with the instructions contained in your letter last above mentioned, caused your client to appear before him on September 14, 1905, and execute an assignment of said warrant to Thomas R. Harney, a member of your firm; and said warrant was thereafter assigned to J. F. King, of Perry, Taylor County, Florida, who, on November 9, 1905, used the same in making a location at the Gainesville, Florida, land office.

At the time that you induced your said client, Letitia J. Hickman, to assign said warrant to you for the sum of \$75, it was worth not less than \$700. It appears that after originally agreeing to prosecute this claim for a fee of \$25, as provided by the act of July 4, 1884, you first offered your client the sum of \$200 for the warrant, if issued; that you subsequently offered your client the sum of \$300 for the warrant, if issued; that you subsequently, through your agent, secured your client to scale the price of the warrant to \$250; and that you subsequently, through your agent, caused your client to agree to sell said warrant for \$75, and that after the issue of the warrant you actually, through your said agent, induced your client to assign said warrant to you in consideration of the sum of \$75, and paid to said agent the sum of \$25 for his services in that behalf.

Case of Heirs of THOMAS PYGALL.

Warrant No. 42,382-160-47.

You were the attorneys of record in this claim and were thoroughly familiar with the provisions of the act of July 4, 1884, governing the payment of attorneys' fees in bounty land cases, when, on December 16, 1904, you wrote a letter to John S. Pygall, of Rosendale, Wisconsin, the first paragraph of which reads as follows:

21 "It is going to be very difficult to obtain a duplicate of the bounty-land warrant that was issued to your mother and the five children, because it is going to be difficult for you to furnish the required evidence. However, we have concluded to try the case if the surviving heirs at law will agree to sell the warrant to us for one hundred dollars (\$100) cash, provided we secure it. If the surviving heirs at law will agree to the above, we will make no charges for our services in prosecuting the case and we will pay for the advertisements that will have to be inserted in the newspapers, concerning the loss of the warrant. We will be to considerable expense in the matter and besides we will have to take all the chances of success.

If the above is satisfactory to you, then we would suggest that you do this:"

When you wrote said letter you well knew that if the duplicate warrant had been issued and had been assigned to you, you could have sold the same for not less than \$480 and, in your said letter of December 16, 1904, you made no statement whatever as to the actual value of said warrant, but, on the contrary, thereby attempted to enter into a champertous and illegal contract to pay the expenses incident to the prosecution of the claim and to absorb over three-fourths of the value of the warrant, if issued. Any written or oral contract which you may have entered into to that end is wholly void and in violation of the provisions of Section 2436, R. S., U. S.

The claim has been allowed, and the warrant has been forwarded to the parties in interest by this Bureau.

Case of ELVIRA E. GRAVES.

Warrant No. 49,456-80-55.

As such attorneys you, jointly, on October 5, 1903, filed in this Bureau an application executed by Elvira E. Graves of Jackson county, Tennessee, for the issuance of a duplicate of the military bounty land warrant above cited. The duplicate issued on April 27, 1904, and was turned over to you as the attorney for said Elvira E. Graves on May 19, 1904. During the month of May, 1904, you induced your client, said Elvira E. Graves, to assign said warrant to you for the sum of \$100, and on July 30, 1904, the warrant was sold, through William J. Johnson, of Washington, D. C., to Abram Mathews, of Marquette, Michigan for \$364.90.

22 John W. Hall, a special examiner of this Bureau, was, on November 22, 1906, instructed to take testimony with reference to the price paid for said warrant, and for certain other warrants which you secured for various clients, and under said instructions, said Hall proceeded to take the deposition of William J. Johnson, warrant dealer, of Washington, D. C., under a subpoena issued out of the Supreme Court of the District of Columbia, and on November 24, 1906, said Johnson, after having had a conversation with you over the telephone, refused to testify with reference to the price paid by him for this and certain other warrants, basing the refusal on the alleged ground that he regarded that question as one requiring the disclosure of his private commercial transactions.

Case of MARGARET MONAGHAN.

Warrant No. 115,689-160-55.

As such attorneys you, jointly, filed in this Bureau and prosecuted to a successful issue, the application of Margaret Monaghan, widow of Thomas Monaghan, late private Co. F, 1st United States Infantry, Texas and New Mexico Indian war, warrant No. 115,689-160-55, and you were certified a fee of \$25 for your services in that behalf under fee agreements filed by you.

Said warrant was issued on July 7, 1905, and delivered to you on the 24th of that month, and on August 7, 1905, you induced your client to assign said warrant to Thomas R. Harney, a member of your firm, for the sum of \$200, and said warrant was sold to W. R. Abbott, by R. A. Fennell, of Washington, D. C., for \$720.

23

Case of WILLIAM C. McKEAN.

Warrant No. 542-40-55.

As such attorneys you, jointly, on March 8, 1905, filed in this Bureau an application for military bounty land warrant executed by William C. McKean, of Seguin, Guadalupe county, Texas, based upon service in Captain McCullough's company, Texas Mounted Volunteers (Mexican war), and during the pendency of said claim, entered into an agreement by virtue of which the warrant, if issued, was to be assigned to you in consideration of the sum of \$75.

The warrant was issued on December 1, 1905, and turned over to you in your capacity as the attorney of record on February 7, 1906, you having been certified a fee of \$10 for services rendered in the prosecution of the claim; on February 13, 1906, the warrant was assigned to Thomas R. Harney, a member of your firm, in consideration of the sum of \$75, paid by you to your said client, and, on February 21, 1906, you sold the warrant for the sum of \$240.

Case of SALLIE B. REDDICK.

Warrant No. 115,700-160-55.

As such attorneys, you, jointly, on January 10, 1905, filed in this Bureau an application executed by Sallie B. Reddick, of Los Angeles, California, as the widow of Jonathan Reddick, late of Captain Hall's company, 3rd Illinois Volunteers, Black Hawk Indian war, and, on the same date, you filed duplicate articles of agreement in connection with said claim; the warrant was issued on August 28, 1905, and was delivered to you as attorneys for the warrantee on September 11, 1905. On September 16, 1905, by paying to your

24 client the sum of \$200, you induced her to sign said warrant to Thomas R. Harney, a member of your firm, and, said warrant was sold to W. R. Abbott, by R. A. Fennell, of Washington, D. C., for \$720, on September 19, 1905.

Case of PAULINE CLARK and WILLIAM L. SHIRKEY, Children of John Shirkey.

Warrant No. 97,078-120-55.

As such attorneys, on June 20, 1904, you, jointly, filed in this Bureau an application executed by Pauline Clark, nee Shirkey, in her own behalf and in behalf of then living and now deceased brother, William L. Shirkey, as the son and daughter of John Shir-

key, late of Captain James Rowland's company of the 4th Virginia Militia, war of 1812.

You prosecuted the claim to a successful issue and the warrant was delivered to you, as such attorneys, on September 30, 1904, and you thereupon caused to be endorsed thereon a form for the assignment of said warrant to Eugene E. Stevens, a member of your firm.

You induced your said clients to assign said warrant to Eugene E. Stevens on March 23, 1905, in consideration of the sum of \$150. Said Eugene E. Stevens assigned said warrant, in blank, on April 22, 1905; on April 25, 1905, you sold said warrant for \$432, and the said warrant was thereafter sold to John H. Hollcroft of Little Rock, Arkansas, for the sum of \$540.

In each of the above cited cases, as the attorneys of record, it was your duty to have promptly turned the warrants over to your client, and, if it was your desire to purchase the same, to have made full disclosure to each client as to all the facts concerning the value of his warrant which might influence them in determining the question of sale. You failed to so deliver any warrant, and failed to make

25 any disclosure whatever as to the value thereof, but, on the contrary, induced each of said clients to assign to you the warrant you had secured to be issued, by offering an inadequate price therefor and by concealing from your client the market value of his warrant.

You filed duplicate articles of agreement as provided by the act of July 4, 1884, in various cases, as above stated, stipulating therein that you would endeavor to the best of your ability to faithfully represent the interests of your clients and would prosecute their claims in consideration of a fee of \$25, when, as you well knew, it was not your intention to collect a legal fee for your services, but to indirectly obtain greater compensation than is provided by said act, by procuring the warrants at not over \$1.25 per acre through taking advantage of the lack of knowledge of your clients in such matters, and by selling such warrants at their market value, this in violation of the provisions of sections 3 and 4 of said act, and in violation of the confidence of your said clients and of your professional duty in the premises.

In filing such articles of agreement, when it was not your intention to comply therewith, you intended to, and did for the time being, deceive this Bureau in the premises.

Said warrants have not to this date been legally delivered to said clients and are illegally withheld from the warrantees in violation of the provisions of sections 3 and 4 of the act of July 4, 1884, and in violation of your professional duty in the premises.

Additional Cases.

As such attorneys you, jointly, filed and prosecuted to a successful issue the claims of James Besser, Warrant No. 49,486-80-55, Issued April 30, 1906; John Clary, Warrant No. 115,631-160-55, Issued September 29, 1904; Sallie Gipson, Warrant No. 49,482-80-55, Issued October 17, 1904; Catharine Hogan, Warrant No. 115,607-160-55, Issued October 23, 1903; Eliza Stevens, Warrant No. 97,082-120-55,

Issued October 9, 1905; and upon the issue of such warrants induced your clients to assign the same to Eugene E. Stevens, or Thomas R. Harney, members of your firm, upon the payment of the smallest sums for which your said clients could be induced to part
 26 therewith, and you sold the warrants of said clients to warrant dealers at the highest prices which you were able to obtain, this in violation of the provisions of sections 3 and 4 of the act of July 4, 1884, and in violation of your professional duty to said clients.

You, and each of you, have sacrificed the interests of your said clients in the manner set forth above, to the sole end that you might procure sums of money to which you had, and have, no legal right and title.

You will be allowed a period of thirty (30) days from the date of the receipt of this letter to show cause why you should not be recommended to the Secretary of the Interior that each of you be disbarred from practice before this Bureau.

Your answers to this citation should be under oath.

Very respectfully,
 (Signed)

V. WARNER,
Commissioner.

27

EXHIBIT "B."

File June 1, 1908.

50621.

To the Honorable the Commissioner of Pensions.

SIR: The undersigned, Eugene E. Stevens and Thomas R. Harney, doing business, together with the estate of Milo B. Stevens, deceased, under the firm name of Milo B. Stevens & Co., Attorneys, have the honor to acknowledge your letter of April 13, 1907, charging us, the said Eugene E. Stevens and Thomas R. Harney, and each of us, with improper, unprofessional and illegal conduct in connection with each claim for military bounty land jointly filed by us, and mentioned in the said letter, in resorting to the methods and in committing the specific alleged offenses in the same set forth; and showing cause why it should not be recommended to the Secretary of the Interior that each of us be disbarred from practice before the Bureau of Pensions, we state as follows:

The claims mentioned are fourteen in number, being designated in your said letter as the cases of the following persons:

- 28
1. Meta G. Thornton;
 2. Mary E. Eaton;
 3. Letitia J. Hickman;
 4. Heirs of Thomas Pygall;
 5. Elvira E. Graves;
 6. Margaret Monaghan;
 7. William E. McKean;
 8. Sallie B. Reddick;

9. Pauline Clark and William L. Shirkey, children of John Shirkey;
10. James Besser;
11. John Clary;
12. Sallie Gipson;
13. Catherine Hogan;
14. Eliza Stevens;

the last five, numbered from ten to fourteen inclusive, being grouped under the general designation "Additional cases."

For convenience of treatment, we consider these cases in their order, first stating your charge in respect of each, and next giving our reply to such charge.

I.

The Thornton Case.

The allegations in this case are as follows:

1. That on February 18, 1904, we filed an application and fee contracts in this case, and on May 12, 1904, during the pendency of the claim, we wrote a letter to the claimant that she could probably get as much as \$1.25 per acre for the warrant, whereas, when we wrote the said letter, we well knew that, if we then had the warrant, we could have sold the same for not less than three dollars per acre;

2. That the claim was rejected May 27, 1904; that we appealed from the action of the Bureau in the premises, and that thereafter, on April 5, 1905, we filed in the Department of the Interior a motion for reconsideration, in the form of a printed brief, consisting of sixteen pages and one cover, which brief was not printed by reason of any practice, rule, or requirement of the Department, was not printed in the interest of the claimant, but was printed for the purpose of exploiting our business; and

3. That on April 25, 1905, we wrote another letter to the claimant, stating that the printer's bill was about equal to the fee that the claimant contracted to pay us, whereas the customary price for a single brief of the character of that submitted by us was One Dollar per page and Two Dollars per cover, so that, at the highest price for printing the same, the expense thereof would not have exceeded the sum of Eighteen Dollars, and that the only other printed matter filed by us in connection with the claim was one declaration and two forms for affidavits and two forms for fee agreements; wherefore our statement to the effect that the printer's bill alone was about equal to the fee that the claimant contracted to pay us was, and is, false and misleading.

(1) It is true that we filed the application and fee contracts and wrote the letter of May 12, 1904, as alleged, but it is not true that, when we wrote the said letter, we well knew that if we then had the warrant we could have sold the same for not less than three dollars per acre; and not only was no warrant ever issued in the case, but also, if we had had the warrant at the date of the said letter, we

could not have sold the same for "not less than three dollars per acre," and, accordingly, we could not have known that we could have sold the same for that price. As matter of fact, we had, at that time, several warrants for sale, some of which we had had for several months, and could not obtain a purchaser therefor, although

they were offered for sale to various brokers in this city.
30 There was, at the time, no demand or market for the warrants, and we could not then get anyone even to make an offer for them. Notwithstanding this situation, and notwithstanding the precarious value of such warrants, for the reason hereinafter appearing, we offered the claimant Two Hundred Dollars cash for the warrant, leaving the matter of acceptance of the offer entirely to her; and we did not, at the time, know, and do not now know, of any sale, actual or expected, of any such warrant at the price of three dollars per acre; wherefore the charge that we knew that, if we then had the warrant, we could have sold the same for not less than three dollars per acre is unfounded.

(2) We concede that it is not, and never has been, so far as we know, the practice of the Department of the Interior to require printed briefs to be furnished in appeals from the action of the Pension Bureau. We deny, however, that the brief in question was not printed in the interest of the claimant but was printed for the purpose of exploiting our business: on the contrary, we caused the brief to be printed in order to gain the particular attention of the Department to the case itself, which had already been twice rejected on appeal, and the question involved therein being far reaching in its effects.

The necessity for the brief and the cause of its being printed and submitted appear from the following facts: May 27, 1904, the claim was rejected by the Bureau upon specific grounds stated, referring to the acts of March 3, 1855, and February 11, 1847. June 11, 1904, an appeal was filed on the contention that the rejection of the claim, for the reasons stated, was an error of law. December 19, 1904, the Secretary rendered a decision upholding the action of the Bureau, as it respected the act of February 11, 30½ 1847, and substituting an entirely new and different ground for refusing the warrant under the act of March 3, 1855. December 31, 1904, a motion for reconsideration was filed, claiming error of law in the Secretary's holding as to the act of March 3, 1855, which motion was overruled January 25, 1905. The decision overruling this motion covers eight typewritten pages. As we had thus encountered two adverse decisions of the Department, namely, on December 19, 1904, and on January 25, 1905, we conceived that it would be difficult, if not impossible, to have another motion for reconsideration based on identical grounds, favorably entertained, unless we should personally appear before the Board of Pension Appeals and present the matter orally, with a volunteer promise that we would file a printed brief if the Department would consent to allow still another hearing. This we did, and that was the sole reason for filing the printed brief. To the preparation of this brief, we devoted earnest labor throughout several weeks, and, finally, filed the brief on April 5, 1905. And we aver the fact to be that the brief

was occasioned and demanded by the situation of this case itself, and was filed therein for the purpose, if possible, of obtaining a favorable decision. On the strength of the arguments advanced in the brief, the Department, on May 31, 1905, over-ruled its two former decisions in the case, rejecting the claim, however, on other grounds, so that no warrant was issued. Incidentally, and as part of its decision, the Department, at the same time, over-ruled the decision in the Kerran case, whereby the double result was accomplished of making it possible for widows of Mexican War soldiers to obtain bounty land warrants where the soldiers had died after the act of March 3, 1855,

and of condoning the carelessness or oversight, whichever it was, of the practice of the Bureau, extending over a period of more than ten years, of allowing this class of cases contrary to law, as laid down in the Kerran case.

That we afterwards used our brief in the Thornton case in connection with other cases is no more evidence that we prepared it for the exploitation of our business than would the fact of any attorney-at-law using a brief in a given case in cases subsequently coming to his hands be evidence that he had prepared the brief in the first instance as a mere advertisement.

(3) The statement that the printer's bill for the brief in question was about equal to the fee that the claimant contracted to pay us was made in the honest belief that it was true. At the date of our letter of April 25, 1905, we had not received the bill and believed that it might amount to as much as Twenty Dollars. As the fee contracted to be paid was Twenty-five Dollars and our statement was that the bill was "*about* equal to the fee," it is respectfully submitted that any allegation that our conduct in this particular was improper, unprofessional or illegal is without justification.

II.

The Eaton Case.

The allegations in this case are as follows:

1. That, on April 11, 1905, we wrote to Henry Hollyday, Esquire, our correspondent in connection with the case, notifying him of the sending of a printed copy of our brief in the Thornton case, and forwarded the same, thereby applying the brief to the exact purpose to which we originally intended it; and

2. That, in our said letter of April 11, 1905, we made misleading and false statements with reference to the cost of that brief.

(1) It is true that we forwarded Mr. Hollyday a copy of our brief in the Thornton case; it is not true that, in so doing, we applied the brief to the purpose for which we originally intended it. We have above truthfully and candidly stated the reason for which we intended the brief, which was to overcome the adverse rulings in the Thornton case, the case in which it was filed; and we resent the charge, which we respectfully protest is both unwarranted and unworthy of the Bureau, that we prepared the brief for any other purpose. Having, in the course of preparation of the brief, fully in-

formed ourselves as to the questions covered by it, and having put into the brief the fruits of our researches and labors, it was, we respectfully insist, entirely within the proprieties, and according to the practice of the most honorable attorneys, to utilize the same in any other cases in our hands to which it might be applied.

(2) As heretofore stated, we had not, on April 25, 1905, received the printer's bill for the brief in question and did not then know what its amount would be; accordingly, we were in equal ignorance at the date of our letter to Mr. Hollyday, namely, April 11, 1905. As respects the allegation that our statement to Mr. Hollyday as to the cost of the brief was false and misleading, we repeat what is hereinbefore said in connection with the Thornton case.

The Hickman Case.

The allegations in this case are as follows:

1. That we induced the claimant to assign her warrant to us for the sum of Seventy-five Dollars, at a time when its worth was not less than Seven Hundred Dollars; and

2. That, after originally agreeing to prosecute the claim for a fee of Twenty-five Dollars, we first offered the claimant Two Hundred Dollars for the warrant, if issued; subsequently offered her Three Hundred Dollars; subsequently, through our agent, secured her to scale the price to Two Hundred and Fifty Dollars; subsequently, through our agent, caused her to agree to sell the warrant for Seventy-five Dollars; and, after the issue of the warrant, through our agent, induced her to assign the warrant to us in consideration of Seventy-five Dollars; and paid to our agent the sum of Twenty-five Dollars for his services in that behalf.

(1) It is not alleged that, at the time the claimant assigned the warrant to us for Seventy-five Dollars, we knew that it was worth not less than Seven Hundred Dollars, and, in fact, it was not worth that sum; and, for the reasons hereinbefore referred to and hereinafter appearing, the value of such warrants was so precarious that it would have been, and was, impossible for anyone certainly to know the value of the warrant when to be actually issued.

(2) It is true that we first, namely, on May 13, and September, 15, 1904, offered Two Hundred Dollars for the warrant, if issued; that we subsequently, on October 4, 1904, raised our offer to
34 Three Hundred Dollars; that on December 23, 1904, we suggested to our correspondent a compromise on the question of price, and the claimant thereafter consented to accept Two Hundred and Fifty Dollars; that subsequently the claimant agreed to sell the warrant for Seventy-five Dollars; and afterwards assigned the same to us for that sum, and that we paid our correspondent Twenty-five Dollars for his services in the case.

Our relation to this case covered the period from May 13, 1904, to September 11, 1905, a period of one year and four months, lacking two days. The claim was rejected on March 11, 1905, and, on

April 4, 1905, we appealed it to the Secretary of the Interior, and it was not finally allowed until August 28, 1905. In addition to the fact that the history of the case made it extremely problematical whether the warrant would ever be procured, we can but repeat what is hereinbefore said as to the precarious value generally of the warrants and recall our experience, hereinbefore referred to, of having them on our hands without a market.

IV.

The Pygall Case.

The allegations in this case are as follows:

1. That, on December 16, 1904, we wrote a letter to John S. Pygall, offering to try the case if the surviving heirs at law of the original warrantee would sell us a duplicate of the warrant for One Hundred Dollars cash, and that we would make no charge for our services in prosecuting the case and would pay for the necessary advertisements, well knowing that, if the duplicate warrant had been issued, we could have sold the same for not less than Four Hundred and Eighty Dollars;

35 2. That, in said letter, we made no statement whatever as to the actual value of said warrant, but, on the contrary, thereby attempted to enter into a champertous and illegal contract to pay the expenses incident to the prosecution of the claim and to absorb over three-fourths of the value of the warrant, if issued; and

3. That any written or oral contract which we may have entered into to that end is wholly void and in violation of the provisions of Section 2436 R. S. U. S.

(1) For the reasons twice hereinbefore referred to, it was not possible for us to know, and we did not know, at the date of our letter of December 16, 1904, what would be the value of the warrant when to be issued.

(2) It is true that we did not, in the said letter, inform the claimant as to the actual value of the warrant, but it is equally true that we did not, at the time, know that value. We did not profess to fix any value on the warrant, unless our offer to purchase it at a set price may be construed as such attempt, and we did not profess to give any assurance as to its value, nor did we, by anything contained in the letter, endeavor to mislead the claimants as to any sources of information accessible as to the value of the warrant or to say anything inviting them to rely upon our offer to the exclusion of any inquiry or inquiries which they might see fit, and which it was entirely within their power, to make in the premises.

As respects the allegation that we attempted to enter into a champertous and illegal contract in the premises, we do not admit that our letter is justly capable of any such construction. We
36 were not undertaking to induce the claimants to *divide* the produce or fruits of our services, which is essential to champerty, but we frankly admit that we were endeavoring to buy, in advance, the subject of claim, and this we submit, we might law-

fully do against the whole world, except the claimants, whose privilege it was, in the end, to refuse to carry the bargain into effect. This consideration is involved in the third allegation, to which we pass.

(3) That any written or oral contract which we may have entered into in the premises may have been void under Section 2436 R. S. U. S., may be admitted, but that it was *in violation* of that Section is respectfully denied, for the reason that that Section does not forbid such agreements; it only makes them void, and it has been so frequently adjudged that the invalidity of such and similar agreements is available only to the claimant, who may, or may not, insist upon such invalidity, that it seems necessary only to add that, as all persons are equally presumed to know the law, the claimants must be presumed to have known that, at the end of our labors and the rendition of our services in the premises, it remained for them, and them only, to recognize or to repudiate any supposed obligation on their part in the premises.

As the Bureau must know, the facts in this case were most complicated, and the services to be rendered involved many and great difficulties. Under date of December 5, 1906, Pygall wrote us that he had received the duplicate land warrant from the Department, and offered to send the same to us for the agreed price of One

37 Hundred Dollars. On receipt of his letter, we called at the Pension Bureau and learned, for the first time, that, on October 10, 1906, Order 85 had been issued, in accordance with which bounty-land warrants would be no longer delivered to anyone except the claimants, and we also learned, at the same time, that the Bureau did not look with favor upon the practice of attorneys buying warrants from their clients, or entering into agreements to buy warrants afterwards to be issued. We thereupon, on December 12, 1906, wrote and sent the following letter:

WASHINGTON, *December 12, 1906.*

Mr. John S. Pygall, Rosendale, Wisc.

DEAR SIR: We have your favor of the 5th instant informing us that you have received from the Pension Bureau the duplicate bounty-land warrant which you made application for through us. You also say that you are now willing to carry out your agreement to sell it to us.

In reply we would say that when we entered into the agreement to purchase the warrant from you for a cash consideration we believed, and still believe, that we had, and that you had, a perfect right to do so, but we have recently learned that the Pension Bureau does not look with favor on transactions of the like, and, under the circumstances, we have concluded to ask that you make such disposition of the warrant as you see fit, and that you pay us our fee of Ten Dollars for having secured it for you."

In fact, we did not receive the warrant, and we did not receive our fee, and, ever since writing the said letter, we have lived up to the principle therein expressed and have wholly abandoned the field of dealing in land warrants. Had our agreement been carried out, however, the claimant would have been greatly benefitted, by reason of the fact that, on January 31, 1907, the Secretary of the In-

terior, in the case of Lawrence W. Simpson, overruled the decision of February 5, 1902, in the case of Charles P. Maginnis, as to the location of land warrants, thereby making it difficult for any warrantee to dispose of his warrant at even seventy-five cents per a-re. The offer, therefore, contained in our letter of December 16, 1904, for the warrant when issued proved to be more than a fair offer
38 for the warrant, and is an apt illustration of the precarious value of such warrants, hereinbefore several times referred to.

V.

The Graves Case.

The allegations in this case are as follows:

1. That, on October 5, 1903, we filed an application for the issuance of a duplicate warrant, which was issued on April 27, 1904, and turned over to us on May 19, 1904, and that during the month of May, 1904, we induced the claimant to assign the warrant to us for the sum of One Hundred Dollars, and, on July 30, 1904, the warrant was sold, through William J. Johnson, of this city, to one Matthews for Three Hundred and Sixty-four Dollars and ninety cents; and

2. That the said Johnson after having had a conversation with us over the telephone refused to testify with reference to the price paid by him for this and certain other warrants, basing his refusal on the alleged ground that he regarded that question as one requiring the disclosure of his private commercial transactions.

(1) It is true that we made the application stated and received an assignment of the said warrant for the sum of One Hundred Dollars. We have no knowledge as to the allegation that the said Johnson sold the warrant for the sum mentioned, except on information and belief, and, in selling the said warrant, the said Johnson was not acting for us in the transaction.

(2) As to Mr. Johnson's refusal to testify, as alleged, the fact is that Mr. Johnson did call on us by telephone, stating to Mr.
39 Harney, who answered the call, that a special examiner was at his, Johnson's, office and desired to take his deposition with respect to certain land warrants that we had sold him, and also as to the price he paid us for the same. Mr. Harney informed Mr. Johnson that he was at liberty, so far as our firm was concerned, to give the information, and also informed Mr. Johnson that the firm would give the information to the special examiner himself, if he would call at our office. Mr. Johnson's refusal to give the information was on his own responsibility and not because of any advice, request, or suggestion whatever from us, or either of us, and it is believed that Mr. Johnson will so testify, if requested to do so.

VI.

The Monoghan Case.

The allegations in this case are as follows:

1. That we prosecuted the claim to a successful issue, were certified a fee of Twenty-five Dollars for our services in that behalf, the

warrant was issued on July 7, 1905, and delivered to us on the 24th of that month; on August 7, 1905, we induced the claimant to assign the warrant to Mr. Harney for the sum of Two Hundred Dollars, and the warrant was sold to one Abbott by one Fennell, of this city, for Seven Hundred and Twenty Dollars.

It is true that the warrant in this case was purchased by us for the sum of Two Hundred Dollars, but we had no relation whatever to the sale thereof to Abbott by Fennell.

VII.

The McKean Case.

The allegations in this case are as follows:

40 That we filed the application, entered into an agreement, by virtue of which the warrant, if issued, was to be assigned to us. The warrant was issued on December 1, 1905, and turned over to us February 7, 1906, we having been certified a fee of Ten Dollars for services rendered in the prosecution of the claim, and, on February 13, 1906, the warrant was assigned to Mr. Harney and, on February 21, 1906, sold by us for the sum of Two Hundred and Forty Dollars.

These allegations are true, except that we waived our fee of Ten Dollars and made no attempt to collect the same.

VIII.

The Reddick Case.

The allegations in this case are as follows:

That we filed the application and duplicate articles of agreement in connection with the claim; on September 16, 1905, we induced the claimant, for the sum of Two Hundred Dollars, to assign the warrant to Mr. Harney, and the warrant was sold to one Abbott by one Fennell for Seven Hundred and Twenty Dollars on September 19, 1905.

This warrant was purchased by us for the sum of Two Hundred Dollars; we received no fee; and there were some expenses incidental to the purchase of the warrant. We had no relation to the alleged sale to Abbott by Fennell, and the same was not made on our account.

IX.

The Shirkey Case.

41 The allegations in this case are that we filed the application, prosecuted the claim to a successful issue; the warrant was delivered to us on September 30, 1904; we induced the claimant to assign the same to Mr. Stevens, on March 23, 1905, in consideration of One Hundred and Fifty Dollars; on April 25, 1905, we sold the warrant for Four Hundred and Thirty-two Dollars, and the warrant was thereafter sold to one Hollcroft for the sum of Five Hundred and Forty Dollars.

We admit these allegations, except we say that we received no fee in the case; we paid other counsel for their services in connection therewith, and we had nothing to do with, and no relation to, the sale to Hollcroft.

X.

The Additional Cases.

The allegations in these cases are that, upon the issue of the warrants, we induced the claimants to assign the same to us, upon the payment of the smallest sums for which the claimants could be induced to part therewith, and we sold the warrants to warrant dealers at the highest prices which we were able to obtain—this in violation of the provisions of Sections 3 and 4 of the Act of July 4, 1884, and in violation of our professional duty to the claimants.

We admit that we purchased the warrants in these cases, but, in each instance, for a sum agreed to by the claimants, and we admit that we sold the warrants at the best prices which we could obtain, but we deny that, in so doing, we violated any of the provisions of Sections 3 and 4 of the Act of July 4, 1884.

42 These Sections of the Act mentioned prohibit the demanding or receiving of compensation for *services in procuring* land warrants, otherwise than in accordance with the provisions of the Sections. In no instance did we demand or receive any compensation for our services in excess of that fixed by the law; in every instance we bargained for the purchase of the warrants and none of the claimants in these, or any of the other cases, could possibly have understood otherwise. We admit that our agreements were of the nature contemplated by Section 2436 R. S. U. S., but, as hereinbefore stated, that Section does not prohibit such agreements, but merely renders them void to the extent, and in the sense, that it was the privilege of the claimants at any time to repudiate the agreements, and we were powerless to enforce them against the claimants, should they set up their invalidity. To what extent our action in the premises may be deemed reprehensible, or the severe punishment threatened us be justifiable, we consider hereinafter.

The Bureau, in its letter, charges us with improper, unprofessional and illegal conduct in the following words:

“As the attorneys of record, it was your duty to have promptly turned the warrants over to your client, and if it was your desire to purchase the same, to have made full disclosures to each client as to all the facts concerning the value of his warrant which might influence him in determining the question of sale. You failed to so deliver any warrant, and failed to make any disclosure whatever as to the value thereof, but, on the contrary, induced each of said clients to assign to you the warrant you had secured to be issued, by offering an inadequate price therefor and by concealing from your client the market value of his warrant.

You filed duplicate articles of agreement as provided by the act of July 4, 1884, in various cases, as above stated, stipulating therein that you would endeavor to the best of your ability to faithfully represent the interests of your clients and would prosecute their claims

in consideration of a fee of \$25, when as you well knew, it was not your intention to collect a legal fee for your services, but to indirectly obtain greater compensation than is provided by said act, by
43 procuring the warrants at not over \$1.25 per acre, through taking advantage of the lack of knowledge of your clients in such matters, and by selling such warrants at their market value, this in violation of the provisions of sections 3 and 4 of said act, and in violation of the confidence of your said clients and of your professional duty in the premises.

In filing such articles of agreement, when it was not your intention to comply therewith, you intended to, and did for the time being, deceive this Bureau in the premises.

You, and each of you, have sacrificed the interests of your said clients, in the manner set forth above, to the sole end that you might procure sums of money to which you had, and have, no legal right and title."

By way of preliminary to the reply to these averments, hereinafter appearing, we beg to suggest that the following considerations should have earnest and impartial attention.

The present firm of Milo B. Stevens & Co. is composed of ourselves and the estate of its founder, Milo B. Stevens, father of the present senior member, which estate holds over a third interest in the business, and the owners and beneficiaries of that interest are the widow and minor daughter of Mr. Stevens. In the course of the firm's transactions, it has taken over the business of a number of concerns handling pension and miscellaneous claims, including most recently those of George E. Lemon, Alexander M. Kenaday, and Ada C. Sweet. The business of the firm has, therefore, for some years, been in effect the consolidated business of several offices, having to do with pension and miscellaneous claims, and the ramifications of the firm have been proportionately numerous and extensive, including a large practice before the U. S. Patent Office; and, since the death of Mr. Milo B. Stevens in 1896, the details of the business have had the exclusive attention of ourselves, the undersigned, and the widow and daughter mentioned have had no concern nor relation of what kind soever therewith or thereto.

44 The firm was drawn into the business of procuring and speculating in bounty-land warrants through clients and correspondents belonging to the pension branch of its business, clients and correspondents with whom the firm had, for various periods, dealings relating to the procurement of pensions and whose relations to the firm antedated, by greater or less periods of time, any transaction of the firm in bounty-land warrants. This business came to the firm as a natural incident of its pension business, and the firm, through the undersigned, drifted into speculative dealing in land warrants as a side issue, not covered by the articles of partnership nor within contemplation thereof.

The firm's transactions in bounty-land warrants began in the year 1902 and, from and including that year, to and including the year 1906, our transactions with clients were only thirty-seven in all. Of these, twenty-six cases were developed from our connection with pension cases, and the remaining eleven were developed through corre-

spondence with attorneys and others. Of our clients for whom we secured warrants, fifteen either retained the same or sold them to others, and we bought the remaining twenty-two of the thirty-seven warrants procured. Of these twenty-two cases in which we bought the warrants, eleven were of pension clients of ours and the other eleven were of clients who employed us to secure the warrants. Out of the first fifteen cases mentioned, one was that of Pygall, whose warrant we declined to take after learning that the Bureau did not look with favor on the purchase by attorneys of warrants from their bounty-land clients, and, as already stated, since our so learning we have entirely abandoned the dealing in land warrants.

When we entered the field of procuring these warrants, we found an established practice, of many years' standing, as we believe, of attorneys dealing in warrants of their own procurement, which practice we had reason to believe, and believed, was with the full
45 knowledge of the Bureau, and which not only was not the subject of any rule, but which, also, had not been made the subject of any criticism by the Bureau, according to either our knowledge or surmise. Moreover, throughout our transactions in the premises, we had a representative in daily contact with the Bureau, and no intimation, direct or indirect, was ever made to either such representative or ourselves of any suspicion of impropriety in the prevalent practice. As already stated, in the fall of 1906, we first learned of the discountenance by the Bureau of the practice, and immediately abandoned it, as is evidenced by our action in the Pygall case, above stated.

Moreover, by reason of the fact that the value of such warrants for location was dependent upon the Department's decision in the Maginnis case, and of our knowledge and that of the agents and attorneys in general dealing in such matters that the decision might at any time be modified or over-ruled, we were fully aware that anything approaching certainty in the value of the warrants was problematical and temporary; and, by reason of the further fact that in undertaking to dispose of the warrants to third persons we would be, and were, obliged to assume all the risks hereinbefore mentioned, we considered the warrants as of precarious value, as in fact they were; and our contemplation of the fate of the Maginnis decision was realized in the decision in the Simpson case, limiting the location of the warrants to what it was before the Maginnis decision, before which time even, as above stated, we had, at times, on our hands warrants of which we could not dispose, and for which we had not even offers. All of these facts well known to us, made our dealing in the warrants a manifest venture, and had any of our clients, before agreeing to deal with us in respect of assigning the warrants,
46 made inquiry of us, all of the foregoing facts would have been communicated to such, with the probable, if not inevitable, result of inducing a willingness on the part of applicants in many instances to dispose of their warrants at even less than the sums for which they agreed to sell them.

Having these considerations in view, we reply to the several specific charges above quoted, as follows:

1. For the reasons appearing, it was impossible to disclose to any

client the value of his warrant further than to quote the latest price of which we knew, and, in so doing, justice to ourselves would have required the communication, at the same time, of the foregoing considerations, at the risk of appearing to attempt to mislead the client and to beat him down in his price, which would have put us in a situation more awkward, in our judgment, than the one we are now facing. This, at the same time, answers the charge that it was our duty to make full disclosures to each client as to all the facts concerning the value of his warrant which might influence him in determining the question of sale, for the obvious reason *reason* that so to have done would have rendered us subject to the imputation indicated; and whether the substitution by any attorney of his position as such by the position of a bargainer for the subject of controversy requires the attorney to undertake to lay before his client all the facts which he thinks pertinent, at the imminent risk of unintentionally omitting what to others might seem pertinent, and thereby bringing himself under reprobation, is among the nicest questions in professional dealings and ethics, and one which no attorney, with any regard for either appearances or consequences, would be wise in assuming. The other question, how far a client approached by his attorney as a possible vendor of the subject of employment is subject to the rule that every intending vendor and every intending purchaser are expected and assumed to deal with one another at

47 arm's length, is another nice question, the discussion of which we do not think necessary in the premises. As respects the charge that we did not turn the warrants over to our clients, it should suffice to say that the relation of purchaser on our part having been assumed, whether wisely or unwisely, commendably, or otherwise, put the delivery of the warrants to the client manifestly out of contemplation.

2. It is not true that, at the time of filing the articles of agreement in any case, it was not our intention to collect a legal fee for our services but to obtain, indirectly, greater compensation than is provided by law. It was our original and honest intention to live up to our agreements of employment, if our clients did not change our relation from that of attorney to that of intending purchaser. Had our proposition to purchase in any case been declined, we would have lived up to both the letter and the spirit of our contract of employment and gone on with our work as attorneys to the end. The suggestion that we were taking advantage of the lack of knowledge of our clients in such matters is met by what is hereinbefore said in reply to the immediately preceding charge and otherwise hereinbefore in relation to the provisions of Sections 3 and 4 of the act of 1884; so much so that we hardly deem it necessary to add that it is not charged or intimated, and it is not true, that we have been guilty of the only thing in respect of which reprobation may justly be visited upon an attorney dealing with his client in respect of the purchase of the subject of his services, namely, the taking advantage of the client by either misleading him by affirmative statements or throwing him off his guard by concealing from him, or turning him away from, available sources of information to which he might resort to his advantage.

48 3. We submit that the charge that, in filing our articles of agreement, we intended, and did, for the time being, deceive the Bureau, is wholly untenable. The only thing which it was the province of the Bureau to require, or which it was interested in knowing in the premises, was, whether, in appearing as attorneys for applicants, we had the right so to do and were in a position to make good our undertaking in the premises. Had the ultimate disposition of the warrant, after being legally procured, could be any affair of the Bureau, and how, in the premises, the Bureau could be deceived, we respectfully protest our inability to appreciate.

4. The charge that we have sacrificed the interests of our cliens to the sole end that we might secure sums of money to which we have, and had, no legal right and title is abundantly answered by what is hereinbefore said.

But further meeting this charge, we beg to add that, since our attention was attracted in 1906 to the discountenance by the Bureau of the practice mentioned, we have frankly realized that a nicer consideration and appreciation of our situation in dealing with these cases would have prevented our falling into the practice in question, and, in attestation of this, we have of our own motion, and without any outside intimation, advice or suggestion whatsoever of the necessity or propriety of so doing, and without any request on the part of our clients, returned to each and every one of them the financial advantage accruing to us, not only in the cases under consideration, but also in all other cases in which we purchased a bounty-land warrant in the procurement of the issuance of which we had acted as attorney or agent for the warrantee. We submit herewith, and ask to have taken as part hereof, a copy of the circular letter which, *mutatis mutandis*, we have addressed to each of our clients, each of which was accompanied by the certified check therein referred to.

Respectfully submitted,

(Signed)

EUGENE E. STEVENS.

(Signed)

THOMAS R. HARNEY.

DISTRICT OF COLUMBIA, ss:

Before me, a Notary Public in and for the District aforesaid, personally appeared Eugene E. Stevens and Thomas R. Harney who, and each of whom, being by me first duly sworn, depose and say that they have read the foregoing answer by them subscribed and know the contents thereof, and that the matter and things therein stated of their own knowledge are true and those stated on their information and belief they believe to be true.

(Signed)

EUGENE E. STEVENS.

(Signed)

THOMAS R. HARNEY.

Subscribed and sworn to before me this 21st day of May, A. D. 1907.

[SEAL.]

(Signed)

FRANK D. FAWCETT,

Notary Public, D. C.

EXHIBIT "C."

Filed June 1, 1908.

50621.

In the Department of the Interior, Bureau of Pensions.

In the Matter of MILO B. STEVENS & COMPANY.

To the Honorable the Commissioner of Pensions.

SIR: I have the honor herewith to submit, in response to your suggestion in that behalf, the evidence in support of certain allegations heretofore made by Messrs. Eugene E. Stevens and Thomas R. Harney to your citation upon them to show cause why it should not be recommended to the Secretary of the Interior that each of them be disbarred from practice before the Pension Bureau.

51 Premising that your suggestion is in reversal of the general, and indeed universal, rule that every one accused of an offense is presumed to be innocent until the contrary be made to appear, that the burden of establishing any accusation is upon the accuser, and that the accused is under no obligation, either legal or moral, to support allegations responsive to the matters charged until some evidence to the contrary has been presented, I present for your consideration what is hereinafter set forth.

Your suggestion does not point to the particular allegations of the answer in respect of which evidence is desired, and I am, therefore, under the necessity of collecting from the answer, in the light of the citation, the matters respecting which support by evidence is supposed to be desired and available. Should it be found that I am, in any particular, mistaken and that there is any other allegation in the answer than those mentioned by me respecting which evidence is desired, I will thank you to indicate the same and will gladly submit any further evidence possible in the premises.

The allegations of the answer, to which I assume your suggestion to apply, are ten in number, as follows:

1. That when Messrs. Stevens & Company wrote the letter of May 12, 1904, in the Thornton case, they did not know that if they then had the warrant they could have sold the same for not less than three dollars per acre, but that, as matter of fact, they had, at that time, several warrants for sale, some of which they had had for several months and could not obtain a purchaser therefor, although they were offered for sale to various brokers in this City;

2. That, at the date of their letter of December 16, 1904, in the Pygall case, Messrs. Stevens & Company did not know what would be the value of the warrant when to be issued;

52 3. That in selling the warrant in the Graves case the certain Johnston mentioned in the citation was not acting for Messrs. Stevens & Company in the transaction, and that as to the said Johnston's refusal to testify he was informed that he was at

liberty, so far as the firm was concerned, to give the desired information, and that his refusal to give the same was on his own responsibility, and not because of any advice, request or suggestion whatever from the firm, or any member thereof;

4. That the firm had no relation to the sales of the warrants by one Fennell to one Abbott, in the Monaghan and Reddick cases;

5. That the business of dealing in land warrants came to the firm as a natural incident of its pension business; and that the firm's transactions with clients in dealing in bounty land warrants were only thirty-seven in all, of which twenty-six were developed from the firm's connection with pension cases, and the remaining eleven through correspondence with attorneys and others;

6. That of the firm's clients for whom it secured warrants fifteen either retained the same or sold them to others, and the firm bought the remaining twenty-two of the thirty-seven warrants procured;

7. That of the twenty-two cases in which the firm bought the warrants, eleven were of pension clients of the firm, and the others were of clients who employed the firm to secure the warrants;

8. That, in the Pygall case, the firm declined to take the warrant after learning that the Bureau did not look with favor on attorneys purchasing bounty land warrants of their own procurement, and that, since so learning, the firm entirely abandoned dealing in land warrants;

9. That, when the firm entered the field of procuring these
53 warrants, it found an established practice of attorneys dealing in warrants of their own procurement, which practice the firm had reason to believe, and believed, was with the full knowledge of the Bureau, and which, not only was not the subject of any rule, but which also had not been the subject of any criticism by the Bureau, according to either the knowledge or surmise of the firm, or any member thereof; and

10. That the firm has returned to each and every of its clients the financial advantage accruing to it through dealing in the warrants, not only in the cases under consideration, but also in all other cases in which the firm purchased land warrants in the procurement of the issuance of which it had acted as agent or attorney.

I deal with the evidence in support of these allegations in their order.

1. On May 12, 1904, the date of the letter in the Thornton case, neither Messrs. Stevens & Company, nor anyone else, could know the value of any given warrant, for the reasons set forth in the answer at, among other places, pages 21 and 22, and the further reason that, during the year 1904, there was practically no demand for such warrants and they were a drug on the market; and that the firm did not know that if, at that date, it then had the Thornton warrant it could have sold the same for not less than three dollars per acre, and that, as matter of fact, the firm had, at that time, several warrants for sale, some of which it had had for several months and could not obtain a purchaser therefor, notwithstanding offers for sale to various brokers in this City, is conclusively established by the fact that, on the date named, the firm had in its possession six

54 warrants purchased at various dates from February 4, to May 11, 1904, all of which were for sale and offered for sale without obtaining a customer, until on July 26, 1904, more than two months after the date of the letter, they were all sold to Mr. F. W. McReynolds, of this City, at a price less than three dollars, namely, two dollars and ninety-one cents, per acre. Mr. McReynolds, as I learn through a family connection, and otherwise, is absent from the city and not expected to return before the end of July, at the earliest. His office is in the Fendall Building, this City, and he is well known as a dealer in warrants and scrip, and, although absent from the city, I have no doubt is accessible by correspondence, and the Bureau may easily verify through him the statement here made. In addition, the statement is supported by the affidavits of Emily F. Camp, Annie R. Walton, Frank D. Fawcett, Homer Guerri and Henry N. Copp, herewith filed.

2. That, at the date of the firm's letter of December 16, 1904, in the Pygall case, it did not know what would be the value of the warrant when to be issued is established by what has just been said in relation to the Thornton case; in addition to which, the Pygall case was for a duplicate warrant involving the familiar difficulties as to getting the assignments of interest of all heirs and legal representatives and the incident expense of so doing, wholly impossible of calculation in advance.

3. That, in selling the warrant in the Graves case, Mr. Johnston was not acting for the firm, and that as to his refusal to testify he was at liberty, so far as the firm was concerned, to give the desired information, and his refusal was on his own responsibility exclusively, is established by the firm's answer to this effect, under oath, and Mr. Johnson's affidavit herewith filed.

4. That the firm had no relation to the sales of the warrants by Fennell to Abbott in the Monaghan and Reddick cases appears 55 from the fact that the warrants passed out of the firm's possession by sale to Messrs. Spalding & Sons on September 26, 1905, as is shown by the affidavits of Miss Camp and Mr. Fawcett, heretofore mentioned. Mr. Fennell has an office at 13th and G streets, Northwest, this City, and, although personally unknown to any member of the firm, is assumed to be known and accessible to the Bureau, or some of its officers.

5. That the business of dealing in land warrants came to the firm as a natural incident of its pension business, and that its transactions with clients in dealing in warrants were, in all, thirty-seven, of which twenty-six were developed from the firm's connection with pension cases, and the remaining eleven through corre- 56 spondence with attorneys and others, and that, in no single instance, was any dealing with a warrant had through or upon information obtained from the land office is shown by "Exhibit Bounty Land Cases," herewith filed, and the affidavits of Miss Camp, Miss Walton and Mr. Fawcett. This exhibit gives the record in detail as to each of the land warrants dealt in by the firm, and completely refutes any suggestion that the business of dealing in them came about in any other manner than as stated in the answer.

6. That of the firm's clients for whom it secured warrants, fifteen

either retained the same or sold them to others is also established by the affidavits just mentioned.

7. That of the twenty-two cases in which the firm bought the warrants, eleven were of pension clients of the firm, and the others of clients who employed the firm to secure the warrants, is shown by the affidavits of Miss Camp and Mr. Fawcett, and by the records of your Bureau, accessible to you.

8. That, in the Pygall case, the firm, as far back as December 12, 1906, and four months before the citation upon it, declined to take the warrant after learning that the Bureau did not look with favor on attorneys purchasing bounty land warrants of their own procurement, and so declined for that reason, and that since so learning the firm has abandoned dealing in land warrants is shown by "Exhibit Pygall," consisting of three original letters of Pygall and a copy of the firm's letter to him conveying the declination, and the affidavits of Miss Camp, Miss Walton and Mr. Fawcett.

9. That, when the firm entered the field of procuring these warrants, it found an established practice of attorneys dealing in warrants of their procurement, which practice it had reason to believe, and believed, was with the full knowledge of the Bureau and which, not only was not the subject of any rule, but which also had
57 not been the subject of any criticism by the Bureau, according to either the firm's knowledge of its surmise, is shown by the firm's answer to the citation and the affidavits of Messrs. Guerry, Johnston, Copp and Fawcett.

In this connection, you are especially asked to note that the allegation of the answer, (page 21), is not that you personally are responsible for this practice, or that you first approved, and afterwards disapproved, it, but that, when the *the* firm entered upon the practice, which was in 1902, some three years before your assuming office, it found the practice then already of many years standing, and that the first disapproval of it was by you in the latter part of 1906. The answer, accordingly, instead of charging you with any blame for the practice, in fact absolves you from such and gives to you the credit attaching to its discontinuance. The affidavits submitted show the practice to have been of quite thirty years standing before your disapproval of it, and if the firm's answer and the affidavits mentioned are not deemed sufficient to establish the fact of the long continuance of the practice with the knowledge of the Pension Bureau and its officers, you are respectfully invited to examine the officers of your Bureau on the subject, among them, Mr. Charles M. Bryant, Chief of the old War and Navy Division; Doctor William L. Chamberlain, Assistant Chief of the same division; and Mr. James L. Davenport, First Deputy Commissioner of Pensions.

10. That the firm has returned to each and every of its clients the financial advantage accruing to it through dealing in the warrants, not only in the cases under consideration, but also in all other cases in which the firm purchased land warrants in the procurement of the issuance of which it had acted as attorney or agent is shown by "Exhibit Refund," herewith filed, the affidavit of Miss Camp, and the receipts of the several clients, also herewith filed.

58 The evidence thus submitted shows that voluntarily the firm has repaid to its clients sums aggregating nearly Seven thousand dollars, an action which suggests itself to me as an example worthy of emulation rather than artifice calling for rebuke.

In submitting this matter for your final consideration and action, upon the accompanying evidence and the answer heretofore filed, I beg leave to avail myself of the occasion, although strictly not within the limits of the extension which you have so considerately granted me, and for which I beg you to accept the expression of my high appreciation, to say that I feel that it will not be amiss to ask your attention to the fact that, under whatever criticism other attorneys may properly rest in the particulars indicated, it cannot truthfully be charged upon Messrs. Stevens & Company either that they obtained through the Land Office the names of the clients for whom they acted, or that they were the beneficiaries of any "leak" in that or any other office. The "Exhibit Bounty Cases" establishes this beyond all doubt, even without the aid of the affidavits bearing upon the point; and I feel that I may properly repeat what is above said, namely, that it is not your administration of the Bureau of Pensions that has been charged, either directly or indirectly, with first an approval and afterwards, a disapproval, of the practice under consideration. You will note, also, that, although Messrs. Stevens & Company were cited in but twelve cases, they have, in fact, made restitution in all of the twenty-two cases in which they followed the practice mentioned, and that, at the time of so doing, they had every reason to believe, and did believe, that their case would be considered upon the twelve cases only.

These considerations thus briefly stated; the perfect candor of Messrs. Stevens and Harney in their answer to the citation; the long
59 good standing of the firm and the respectability of its members; the fact that a more than one-third interest in the business is owned by the widow and minor daughter of its founder who have had no active participation in its affairs and were utterly ignorant of the transactions brought under criticism; the fact that restitution has been made under conditions rendering any successful claim for such by the warrantees highly problematical, to say the least; and other considerations not deemed necessary to be here set forth, conduce to the conviction on my part that the fair and just examination and treatment of the case which I know it will have at your hands will lead you to the judgment that the harsh penalty with which the parties are threatened is unmerited and ought not to be imposed. You have personally told me that it is not punishment that you are seeking, so much as the breaking up of the practice under criticism, and as, in this case, in advance of your own movement in the matter, the parties, of their own motion, brought about the result which you have declared to be your aim, I assume to express the opinion that the incident, so far as these gentlemen are concerned, might properly be announced closed, with whatever appropriate comment upon their action heretofore the situation may seem to you to call for, regard being had to your very proper desire to keep the practitioners before your Bureau above even suspicion.

Respectfully submitted,

(Signed)

HENRY E. DAVIS,
Attorney for Milo B. Stevens and Company.

60

Affidavit of Frank D. Fawcett.

DISTRICT OF COLUMBIA, ss:

Before me, a Notary Public in and for the District aforesaid, personally appeared Frank D. Fawcett, who, being by me first duly sworn, deposes and says:

I have been in the employ of the firm of Milo B. Stevens & Company since July 23, 1897. On July 17, 1900, I was made the firm's acting chief clerk, and, in May, 1902, I was appointed, and since have been, and now am, chief clerk of its Washington office. As such chief clerk, I have, since my said appointment, had under my personal supervision the filing and prosecution of applications for bounty land warrants, and am familiar with the methods of the firm and know the sources from which this class of its business has been derived. This I know of my own personal knowledge, as I have been in personal charge of these matters.

Between May, 1902, and December, 1906, the firm successfully prosecuted only thirty-seven applications for bounty land warrants, of which the firm purchased twenty-two, and the remaining fifteen were either retained by the applicants or sold by them to others. I have examined "Exhibit Refund," and its several parts, numbered I, II, III and IV, which are to be filed herewith, and, from my personal knowledge and the records of the said firm respecting the same, they are true and correct, to the best of my knowledge and belief.

On June 8, 1901, the Honorable Secretary of the Interior in the case of Robert Markwood (11 P. D., pp. 380-7), overturned
61 the practice that had existed in the Pension Bureau since the passage of the act of January 5, 1893, in the matter of the proper date of commencement of the increase of pension authorized by said act. During said period the practice was governed by Order 231 of the Commissioner of Pensions, dated July 6, 1893.

The Order was as follows:

"The date of commencement in Mexican war claims for increase under the act of January 5, 1893, shall in each case be the day on which the case is legally approved for admission by the Board of Review."

In the Markwood decision the Honorable Secretary of the Interior held, in effect, that every soldier or sailor who had his pension increased under the act of January 5, 1893, between January 5, 1893, and June 8, 1901, the date of the decision, was entitled to a rerating of his pension back either to the date of the act, January 5, 1893, or back to whatever date subsequent to the act he could show by proof that the conditions of disability and destitution, referred to in the act, commenced to exist and continued. Under this decision there were several thousand who became entitled to have their pensions rerated and in view of this decision the firm filed, between the year 1901, and December 31, 1906, 3547 claims for (1), rerating and (2), increase of pension. During the same period the firm also

filed 708 applications for original pensions for (3), Indian war survivors and widows, and (4), Mexican war widows, making a grand total of the four classes of 4255 cases.

The firm, on the death of Alexander M. Kenaday on March 25, 1897, became his successors. He was also Secretary of the National Association of Veterans of the Mexican War, and on purchasing his pension claims business the firm secured a large number of Mexican

62 war increase cases, and several thousand names and addresses of Mexican war survivors and widows. As Mr. Kenaday

had secured an increase of pension under the act of January 5, 1893, for a large number of survivors, the firm was thus enabled to obtain a large number of applications for rerating of pensions. While actively engaged in the prosecution of this class of pension claims, as well as its other pension and miscellaneous war claims business, the Honorable Secretary of the Interior, on February 5, 1902, rendered a decision in the land case of Charles P. Maginnis (Vol. 31, Public Land Decisions, p. 222), of considerable importance to owners of, or persons having title to, bounty land warrants. This decision overturned the practice that had existed in the General Land Office since the passage of the act of March 2, 1889—a period of about thirteen years—in the matter of the location and use of bounty land warrants. This decision had the effect of giving said warrants a temporary speculative value. The result was that considerable activity was shown by scrip dealers and others in the matter of trying to purchase bounty land warrants. During this activity, the firm appeared as the attorneys of record before the Pension Bureau between 1901 and 1906, as before stated, in over 4000 claims for increase of pension, rerating the pension and original pensions in behalf of Mexican war survivors, Indian war survivors, Indian war widows and Mexican war widows. This was the identical class which might have title to bounty land warrants. The result was that a large number of the clients of the firm wrote the firm concerning bounty land titles. In a number of the cases, perhaps a dozen or more, I looked into the matter at the Pension Bureau and found that as a rule they had all received the full 160 acres of bounty land warrants. In view of this fact, and because the inquiries thereafter became so numerous, the firm submitted to the Pension Bureau the question whether it would require these prospective clients to go to the expense of executing formal applications for the purpose

63 of finding out whether or not there were bounty land warrants due them. The Commissioner consented to waive the filing of formal applications and directed that the information be given the attorney, either upon his presenting a letter from his client, or upon the written request of the attorney for information. This practice was followed in the Pension Bureau from about November, 1902, to some time during the latter part of 1895, when it was abolished, and thereafter formal applications had to be presented from the applicants. It was rarely found that any bounty land warrants were due.

The bounty land business was thus a more or less natural incident to the other business of the firm, and the firm's connection with it

was occasioned by its large clientage in Mexican war and Indian war pension cases, and also by reason of the stimulus occasioned by the decision of the Department of February 5, 1902, in the Maginnis case.

Between the years 1902 and 1906, inclusive, I visited the Pension Bureau on an average of once a week in connection with the firm's pension business, including, of course, its military bounty land business. In the military bounty land matters my dealings and conversations were usually had with Mr. Nathan B. Prentice, the assistant chief of the Old War and Navy Division, the division having in charge consideration of military bounty land warrants. He knew, because he often spoke of the matter to me, that attorneys were purchasing from their clients bounty land warrants, and while I cannot say that the other officials in the division knew about it, yet I feel morally certain that they did, because it was the general practice for attorneys to do it, and I never heard the practice questioned, or any objections raised against it by any of the officials of the Department

64 until about December, 1906, when it came to my knowledge, through the firm's prosecution of the bounty land warrant case of Pygall, that the Pension Bureau did not look with favor on attorneys purchasing warrants from clients who had employed them to secure the warrants. As soon as this was discovered, I know that the firm promptly abandoned the practice and on December 12, 1906, wrote Mr. Pygall declining to purchase his warrant, and I know that since that date the firm has entirely abandoned all dealings in land warrants. I recognize the "Exhibit Pygall" as the firm's correspondence on this subject.

I also know that when the firm, on May 12, 1904, wrote the letter in the Thornton case, it had on hand the six military bounty land warrants mentioned in the affidavit of Emily F. Camp. These warrants were held by the firm until July 26, 1904, when they were sold to F. W. McReynolds, a scrip dealer of this city, at \$2.91 per acre. I know that between April and July, 1904, the firm made repeated efforts to dispose of said warrants and was unable to even get an offer for them, the scrip market being so dull.

I can state positively that the firm did not examine the records of the Land Office, nor did it cause the same to be examined, for the purpose of finding out who had secured bounty land warrants that had not been located, and then seek to find the warrantees or their heirs. No such thing was done, and it could not have been done without my knowledge because, as before stated, all of this bounty land work came under my personal supervision and was for the most part attended to by me, and I was familiar with all the bounty land business secured and transacted by the firm.

It did sometimes happen that where individuals had written the firm claiming that they had never received bounty land warrants, inquiry in such cases was made at the Pension Office, as hereinbefore
65 explained, and if it was there learned that land warrants had already been issued in full satisfaction of soldier's military service, the soldier or whoever inquired in his behalf was so informed. In a few instances of this class, the soldier or his widow

denied that any bounty land warrant had ever issued and wanted to know what became of the warrant. I would then take such letters to the Land Office, and it was the custom of that Office to inform attorneys, or any person in fact, whether or not the warrant had been located. If the records showed that they had been located, the firm so informed the person making the inquiry and that ended the matter. I can state positively, however, that the firm never developed and filed a single application from this source, and whenever an inquiry was made at the Land Office at all it was made for the purpose of satisfying the person making the inquiry, and was in every instance done at his or her request. For this work, however, the firm received no compensation whatever. The firm never had but two applications for duplicate bounty land warrants and they were the cases of the heirs of John S. Bygall and Elvira E. Graves, child of George Teel, and the sources from which these two cases were obtained are stated precisely in parts III and IV, respectively, of "Exhibit—Bounty Land Cases," filed herewith.

As above stated, very few were found entitled to bounty land warrants because warrants had already been issued in full satisfaction of the soldier's military service. However, when an inquiry was received concerning these bounty land matters I looked into the matter at the Pension office, the proper place to look into the same, and not at the Land Office. It was quite expensive to the firm to have me give attention to these bounty land inquiries, but nevertheless the firm directed that all such inquiries be properly answered. They could not be properly answered excepting by filing indiscriminately an application from every inquirer, or by submitting the matter, as above explained, to the Pension Bureau; and, as also above explained, the practice of the Pension Bureau between about November, 1902, and some time during the latter part of 1905, was to give this information without the filing of a formal application and thereby save the Pension Office much work, as well as save these prospective applicants the expense of having formal applications executed and filed.

(Signed)

FRANK D. FAWCETT.

Subscribed and sworn to before me this 24th day of June, A. D. 1907.

(Signed)
[SEAL.]

JNO. T. MEANY,
Notary Public, D. C.

67

Affidavit of Emily F. Camp.

DISTRICT OF COLUMBIA, ss:

Before me, a Notary Public in and for the District aforesaid, personally appeared Emily F. Camp, who, being by me first duly sworn, deposes and says:

I have been in the employ of the firm of Milo B. Stevens & Company since the year 1879, and, since April, 1897, have been, and

now am, the cashier and bookkeeper of the said firm, and, as such, I have knowledge of the purchase by the firm of military bounty land warrants, the sale of said warrants, and the expenses incident thereto, all of which appear of record in the books of the firm. Of my own knowledge, and also from said books, which I have examined for the purposes of this affidavit, I know that on May 12, 1904, the firm had on hand, unsold, the following military bounty land warrants, namely,

68	Frances Williams,	purchased February 4, 1904;
	George Bull	" " 11, 1904;
	Eliza Cannon	" April 2, 1904;
	Robert Clark	" " 12, 1904;
	Jane Hollenbeck	" " 15, 1904; and
	Henry W. Fitzgerald	" May 11, 1904.

To the best of my recollection and knowledge, the reason that the aforesaid warrants were, at the date mentioned, in the possession of the firm and had not been sold by it, was because a purchaser therefor could not be obtained for said warrants until July 26, 1904, when, according to the records of the office which were made by me at that date, they were sold to F. W. McReynolds, Esquire, a scrip dealer in the City of Washington, District of Columbia, and the price obtained therefor was less than three dollars, or, to be exact, two dollars and ninety-one cents, per acre.

From a careful examination of the records of the firm covering the entire time I have been its cashier and bookkeeper, I find that the firm successfully prosecuted only thirty-seven bounty land warrant applications, and, out of the total number, the firm purchased twenty-two, the remaining fifteen applicants having retained their warrants or disposed of them to others than the firm, or any member thereof. It is also within my personal knowledge, as well as being a matter of record in the books of the firm, that, on May 10, 1907, the firm sent, by certified cheque, to each and every one of the twenty-two persons from whom it had purchased bounty land warrants, in which the firm had acted as attorneys in the procurement thereof, the full amount received by the firm from the sale of the said warrants, less the amount originally paid the warrantees by the firm, and less the attorneys' fees for securing the same. I have examined the receipts from twenty-one of those to whom the certified cheques were sent, and have carefully compared the statement

69 contained in each receipt as to the amount that the firm originally paid the warrantee, the amount received by the firm from the sale of the warrant, the amount of the attorney's fee, and the amount refunded by certified cheque, and the same is, in each case, correct and true. The only warrantee who has not returned the receipt for the certified cheque sent is Elvira E. Graves, but the firm has received an acknowledgment, under date of May 16, 1907, of the statement in her case and of the cheque sent her, which said acknowledgment and the receipts in the other cases are submitted with the statement of counsel for the said firm of Milo B. Stevens and Company, which this, my affidavit, accompanies.

I also know it to be the fact, as appears from the records of the said firm, that the warrants in the Monaghan and Reddick cases were sold by the firm on September 26, 1905, to Messrs. Spalding & Sons, and the said records do not show that the said firm had any relation to either the sale or purchase of the said warrants, or either of them, by the certain Fennell, or the certain Abbott, mentioned in the letter of the Commissioner of Pensions, of April 13, 1907, citing Messrs. Stevens and Harney, of the said firm, to show cause why they should not be recommended for disbarment; and, prior to the date of said letter, I never heard of either the said Fennell or the said Abbott in connection with either of the said warrants.

(Signed)

EMILY F. CAMP.

Subscribed and sworn to before me, this 24th day of June, A. D. 1907.

(Signed)
[SEAL.]

EDWARD B. KIMBALL,
Notary Public, D. C.

70

Affidavit of Annie R. Walton.

DISTRICT OF COLUMBIA, ss:

Before me, a Notary Public in and for the District aforesaid, personally appeared Annie R. Walton, who, being by me first duly sworn, deposes and says:

With the exception of the three years from 1893 to 1896, I have been in the employ of the firm of Messrs. Milo B. Stevens & Company since 1890, and am now, and continuously since the year 1898, have been, assistant cashier and bookkeeper of the said firm, and, as such have knowledge of the purchase by the said firm of military bounty land warrants, the sale of the said warrants and the expenses incident thereto, all of which appear of record in the books of the firm.

I have read the affidavit of Emily F. Camp, to be filed herewith, and know the contents thereof, and know that the matters and things therein states, as the same appear from the books and records of the said firm, are true as therein stated.

71

(Signed)

ANNIE R. WALTON.

Subscribed and sworn to before me this 24th day of June, A. D. 1907.

(Signed)
[SEAL.]

EDWARD B. KIMBALL,
Notary Public, D. C.

72

Affidavit of Homer Guerry.

DISTRICT OF COLUMBIA, ss:

Before me, a Notary Public in and for the District aforesaid, personally appeared Homer Guerry, who, being by me first duly sworn, deposes and says:

I am, and for more than eight years last past, have been, in active

practice in the District of Columbia as a land attorney and, incidentally to my practice as such, I have, during the entire period mentioned, purchased land rights of all kinds and have probably bought and sold more than sixty thousand acres. I remember well that from June, 1903, to January, 1905, there was a great depression in the scrip business, as I happened, during that period, to be carrying more than eight thousand acres of land rights, of which about five thousand acres were in military bounty land warrants and surveyor-general scrip, practically of the same class. During the said period of more than nineteen months, there was practically no demand for land rights of any kind and not enough sales were made to pay interest on the money invested. I particularly remember that business was so dull during the months of April, May and June, 1904, that I made no sales whatever and as I was heavily loaded with scrip and warrants at that time, I did not care to add to my stock.

During the said three months last mentioned, Messrs. Milo B. Stevens & Company, on several occasions, desired and offered to sell me some military bounty land warrants, but I refused to make them any offer which would receive any consideration whatever. It would be expressive to say that land rights of all kinds at that time were a drug on the market and there was no price which could be easily obtained, and any one purchasing would be apparently taking the greatest kind of speculative risk in so doing; and, not only was there no market for the scrip, but also the same was not available for borrowing purposes, owing to the uncertainty whether the Department would not reverse its decision in the Maginnis case and thereby make the warrants worth considerably less than one dollar per acre.

The decision of 1902 in the Maginnis case, which made warrants and scrip more valuable, because they were available in taking up offered lands directly, was, in fact, reversed by the Departmental decision of January 31, 1907, in the Simpson case, as was anticipated all along by all persons familiar with Departmental decisions, thus realizing the anticipation of the great risk involved in buying warrants or scrip at least by those having a speculative profit in prospect.

I have always understood that it was the practice of attorneys obtaining warrants for their clients to purchase the same, when obtained, and that such practice has existed fully thirty years without the prohibition, or even criticism, of the Bureau of Pensions or Department of the Interior, and that the said practice, from long continuance and acquiescence therein by the Bureau and Department, had come to be understood as, if not having the sanction of the Department, at least not being open to any criticism or objection.

(Signed)

HOMER GUERRY.

74 Subscribed and sworn to before me this 24th day of June, A. D. 1907.

(Signed)

[SEAL.]

HAZEL NORDEMAN,
Notary Public, D. C.

75

Affidavit of Henry N. Copp.

DISTRICT OF COLUMBIA, ss:

Before me, a Notary Public in and for the District aforesaid, personally appeared Henry N. Copp, who, being by me first duly sworn, deposes and says:

I have, for more than thirty years last past, to wit, since the year 1876, been engaged in the District of Columbia in buying and selling military bounty land warrants, some of which I have bought from attorneys who represented to me that they had secured the warrants from the Bureau of Pensions as attorneys of record of the applicants. During all that time, I know it to have been the practice of such attorneys to buy such warrants from their clients, the applicants before the said Bureau and to sell them to others at the most

76 advantageous figures obtainable, and, although I have been actively engaged in the said business of buying and selling the said warrants, I never, until about eight months ago, heard the propriety of the practice questioned; and, indeed, the said practice has been generally followed in the belief, engendered and confirmed by the silence of the Bureau of Pensions and the Department of the Interior on the subject, that the same was legitimate and free from just criticism.

On January 1, 1904, I had on hand, unsold, seventeen hundred and sixty acres of military bounty land warrants, none of which did I sell during the entire year of 1904. The reason that said warrants were not sold was because, throughout that year, there was little or no market for them, and I was compelled to hold them until the year 1905 before I was able to dispose of them.

(Signed)

HENRY N. COPP.

Subscribed and sworn to before me this 24th day of June, A. D. 1907.

(Signed)
[SEAL.]

GEO. E. TERRY,
Notary Public, D. C.

77

Affidavit of William J. Johnston.

DISTRICT OF COLUMBIA, ss:

Before me, a Notary Public in and for the District aforesaid, personally appeared William J. Johnston, who, being by me first duly sworn, deposes and says:

I am a citizen of the United States and a resident of the District of Columbia. I have for thirty-two years been engaged at the City of Washington in the practice before the General Land Office and Department of the Interior in land and mining business, and, incidentally, in Government Land Scrip, including military bounty land warrants, and am familiar with the history of that business and its various details, including the manner and methods of the procurement, issue, assignment and sale of the same.

I know of the pending charges against the firm of Milo B. Stevens & Company before the Bureau of Pensions and the Department of the Interior, and that among the said charges two mention
78 me, namely, (1) that of the sale of one Abram Mathews, of Marquette, Michigan, of warrant No. 49,456, issued to one Elvira E. Graves; and (2), that I refused to testify with reference to this and certain other warrants before one John W. Hall, a Special Examiner of the Pension Bureau.

It is true that I sold the said warrant No. 49,456 to the said Mathews, but it is not true that the said firm of Milo B. Stevens & Company, or any member thereof, had any interest whatever in the said sale, or the proceeds thereof. At the time of making the said sale, the said warrant was my personal property, and I received the said proceeds, of which neither the said firm, nor any member thereof, received any part, and in which neither had any interest.

As respects my refusal to testify before the said Hall, the facts are as follows: The said Hall came to my office and desired to take my deposition, and, while he was there, I called up the office of Messrs. Stevens & Company by telephone, and Mr. Harney, of the said firm, answered my call. I told Mr. Harney that Mr. Hall was at my office, and Mr. Harney replied to me that I was at perfect liberty, so far as his firm was concerned, to give the desired information, and also stated that the firm itself would give the information to the said Hall if he would call at the firm's office. I gave the said Hall all the information that he desired, except as to the prices paid by me for warrants, and my refusal to give the said Hall this information was on my own responsibility and because I did not feel called upon to disclose my personal business and affairs, and my refusal was not because of any advice, request, suggestion, or hint of what kind soever, from the said firm of Stevens & Company, or any member thereof.

I have known as a fact for fully thirty years prior to the current
79 year 1907, of the practice of dealing in military bounty land warrants in the District of Columbia, which practice was so general and followed under such circumstances that the same could not fail to be known to the Bureau of Pensions and its appropriate officers. To my knowledge, there was never any rule of the Bureau of Pensions or of the Department of the Interior forbidding or discountenancing said practice, and I never knew of any criticism thereof, or objection thereto, emanating from the said Bureau or Department until the change of the rule and practice of the Bureau from sending the warrants to the attorneys to that of sending them direct to the claimants. I know also that, prior to the said change of rule and practice, and prior to the institution of the inquiry out of which the charges pending against Messrs. Stevens & Company and other persons have grown, the said practice was followed in full knowledge of its long existence and in the belief, engendered and confirmed by the silence of the Bureau and its officials on the subject, that such was entirely proper.

(Signed)

WILLIAM J. JOHNSTON.

Subscribed and sworn to before me this 24th day of June, A. D. 1907.

(Signed)
[SEAL.]

EDWARD B. KIMBALL,
Notary Public, D. C.

80 Office of Milo B. Stevens & Company, Solicitors of Claims and Patents, Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

AW.

WASHINGTON, D. C., *May* 10, 1907.

Mr. ———.

DEAR —: Sometime since, we bought from you a bounty land warrant of — acres for which we paid you \$—, the price mutually agreed upon, and, in so doing, we believed that we were acting within our rights, notwithstanding that, following a practice of long standing, we ourselves rendered the necessary services in securing the issue of the warrant.

The Bureau of Pensions has recently expressed its disapproval of attorneys dealing in land warrants of their own procurement for their clients, and, waiving all question of the justice of the position of the Bureau in the premises, we are unwilling to rest under that judgment. We have accordingly decided, voluntarily, to remit to you the difference between the price at which we disposed of the warrant and that we paid you for it, less our fee for securing it.

We do not feel it necessary to discuss the propriety or impropriety of the practice in question, but will say that it existed for some years without objection, or, so far as we know, even official comment. In view of the risk assumed by those dealing in land warrants during the period covering our transaction with you, and the necessity of

81 guaranteeing to the person to whom we sold it the validity of each warrant in respect of any possible flaw in the title thereto, or of any possible error in the issuance of the warrant, or of any possible refusal of its acceptance by the General Land Office, and, in view of the further fact that the value of the land warrants depending, as it did, upon a departmental decision of February, 1902, subject to review and reversal, dealing in such warrants was clearly so speculative as to make it hazardous, and to justify the effort to obtain the same from warrantees on the best terms acceptable to them. In verification of this, we need only call your attention to the fact that, since our transaction with you, a departmental decision of January, 1907, has wholly taken away from such warrants a possible value which they formerly had, depending upon the prior departmental decision and that, under existing conditions, your warrant, if now in your possession, would be of far less value to you than even the amount which you received for it.

As early as November, last, for the reason first stated, namely, the discountenance by the Bureau of Pensions of the practice mentioned, we abandoned this field, and have since had no dealings, actual or attempted, in warrants. In consummation of our purpose to give each of our clients the benefit of our prior dealings in that behalf,

we are sending a similar communication to each, and we submit herewith a statement of the account between you and us, as it appears from our records and recollection, and, in accordance therewith, enclose our certified check, for which please sign and return the accompanying receipt. Should your understanding of the account be different from ours, we shall be pleased to hear from you at your early convenience, and, if possible, by return mail.

Very respectfully,
(Signed)

MILO B. STEVENS AND
COMPANY.

82

EXHIBIT REFUNDMENT.

The following statement shows the bounty land warrants purchased by Stevens & Co. in which they were the attorneys of record; what they paid for each warrant; what they obtained for each warrant (making no deduction whatever for amounts paid agents and attorneys as commissions or for other expenses incurred in the purchase of same), and the amount refunded in each case. In the column "Fee" the mark of interrogation is put after the amount whenever appearing to indicate that Stevens & Co. are in doubt whether in the given case a fee contract was filed. If such contract were filed the amount properly to be deducted would be \$25, instead of \$10, but in every instance the claimant has been given the benefit of the doubt and the amount to be deducted fixed at the minimum:

Name of applicant.	Acres.	Paid.	Sold.	Fee.	Refunded.
Besser, James	80	\$250.	\$440.	Paid.	\$190.
Bothwell, Bridget.....	160	225.	704.	\$10 ?	469.
Bull, George.....	160	200.	465.60	10 ?	255.60
Cannon, Elizabeth.....	120	150.	349 20	10 ?	189.20
Clark, Robert	160	200.	465.60	10 ?	255.60
Clary, Sarah A.....	160	190.	560.	10 ?	360.
Eaton, Mary E.....	160	200.	680.	25	455.
83 Brought forward .....	.....	1415.	3664.40	75.	2174.40
Fitzgerald, Henry W.....	120	200.	349.20	10 ?	139.20
Hickman, Letitia J.....	160	75.	680.	25	580.
Gipson, Sallie	80	100.	360.	10 ?	250.
Hardeman, Mary E.....	120	120.	582.	10 ?	452.
Hogan, Catherine.....	160	452.25	600.	Paid.	147.75
Hollenbeck, Jane.....	160	170.	465.60	10 ?	285.60
Maxwell, Catherine.....	160	350.	560.	Paid.	210.
McKean, Wm. C.....	40	50.	240.	10 ?	180.
McQuage, Daniel P.....	160	200.	520.	10 ?	310.
Monaghan, Margaret.....	160	200.	680.	10 ?	470.
Reddick, Sallie B.....	160	200.	680.	25	455.
Shirkey, John (dec'd).....	120	150.	432.	10 ?	272.
Pauline Clark, <i>et al.</i>					
Smith, Sarah F.....	160	208.	704.	10 ?	486.
Stevens, Eliza.....	120	300.	510.	10 ?	200.
Teel, Geo. (dec'd)	80	100.	340.	10 ?	230.
Elvira E. Graves, Child.....					
		\$4290.25	\$11367.20	\$235	\$6841.95

EXHIBIT.

BOUNTY LAND CASES.

I.

Bounty Land Cases Prosecuted by Stevens & Co. and Bought, Which Were developed from Pension Bureau in Their Hands.

1. Bothwell, Bridget, widow Edward H., 1st U. S. I., Indian War, Ctf. No. 5978. Widow's appl. for pension filed Sept. 11/02; B. L. appl. filed Dec. 6/02.

2. Bull, George, U. S. Navy, Mexican War, Ctf. No. 12647. Rerating appl. filed Sept. 7/01; B. L. appl. filed Nov. 18/03.

3. Cannon, Elizabeth, widow Benjamin, Capt. Elmore's Co. La. Vols., Mexican War, Ctf. No. 401. Inc. appl. filed June 17/02; widow's pension appl. filed May 15/03, Ctf. No. 13484. B. L. appl. filed May 15/03.

4. Clary, John, Texas Rangers, Indian War, Ctf. No. 5785. Inv. appl. filed March 16/04; B. L. appl. filed April 28/04; widow's pension appl. filed June 21, 1906.

5. Fitzgerald, Henry W., Co. G., 4th La. Vols., Mexican War, Ctf. No. 1007. Rerating appl. filed Aug. 25/03; B. L. appl. filed Nov. 23/03.

6. Hardeman, Mary E., widow Wm. N., 1st Texas Cav., Mexican War, Ctf. No. 9775. Rerating appl. filed Oct. 11/01; B. L. appl. filed Dec. 8/02.

85 7. Hogan, Andrew —, Co. D, 1st Mtd. Rifles, Indian war, Ctf. No. 4114. Inv. appl. filed Sept. 22/02; widow's appl. pension filed Dec. 9/02; B. L. appl. filed Aug. 22/03. Wid.'s pens. Ctf. No. 5953.

8. Hollenbeck, Jane, wid. Thomas, U. S. Navy, Mexican War, Ctf. No. 9696. Rerating appl. filed May 8/03; B. L. appl. filed Sept. 30/03.

9. Maxwell, Kate, wid. George, Co. K, 1st U. S. I., Indian War, Ctf. No. 6073. Widow's pension appl. filed Jan. 3/03; B. L. appl. filed Feb. 5/04.

10. Monaghan, Margaret, wid. Thomas Co. I, I U. S. I., Indian War, Ctf. No. 7025. Wid.'s pension appl. filed Oct. 28/03; B. L. appl. filed July 11/04.

11. Smith, Sarah F., wid. Burr C., Co. II, 3 La. Vols., Ctf. 9844. Rerating appl. filed Oct. 4/02. B. L. appl. filed Feb. 16/03.

II.

Bounty Land Cases Developed from Pension Cases in Which Stevens & Co. Were Attorneys, Prosecuted but Not Purchased by Them.

12. Crowley, Thomas, Co. C, 1st U. S. I., Indian War, Ctf. No. 3939. Inv. appl. filed Aug. 30/02; B. L. appl. filed June 4/03.

13. Champie, Elizabeth M., wid. Charles, Co. C, 1st U. S. I. Indian War, Ctf. No. 6480. *Inv.* pension appl. filed Feb. 19/03; B. L. appl. filed Aug. 25/03.

14. Duret, C. M., U. S. Navy, Mexican War, Ctf. No. 15696. *Rerating* appl. filed Sept. 2/02; B. L. appl. filed Sept. 25/03.

15. Harrell, Eliza D., widow Stephen E. J., Capt. Redding's Co. Fla. Vols., Ctf. No. 6990. Widow's pension appl. filed March 25/05; B. L. appl. filed Oct. 7/05.

16. Keating, Dennis, 1st U. S. I., Indian War, Ctf. No. 6314. Widow's pension appl. filed Sept. 24/02; B. L. appl. filed Aug. 31/03.

17. Kennedy, Jane, wid. Ross. Co. I, 1st U. S. I., Indian War, Ctf. No. 6239. Widow's pension appl. filed Oct. 11/02; B. L. appl. filed Nov. 24/03.

18. Leonard, Jane, wid. Patrick, Co. I, 1st U. S. I., Indian War, Ctf. No. 6043. Widow's pension appl. filed Sept. 24/02; B. L. appl. filed Sept. 25/03.

86 19. Mormon, Thomas J., Co. A, Ga. Mtd. Vols., Mexican War, Ctf. —? *Inv.* pension power of attorney filed Aug. 25/03; B. L. power of attorney filed Oct. 5/03.

20. Ochiltree, Mary J., wid. Hugh, Capt. Wheeler's Co. 2nd Tex. Vols., Mexican War, Ctf. No. 12615. Widow's pension appl. filed Jan. 5, 1901. B. L. appl. filed Jan. 22/03.

21. Salter, James, Co. C, 2nd U. S. Drag., Indian War, Ctf. No. 4506. *Inv.* appl. filed Sept. 15/02; B. L. appl. filed July 6/03.

22. Semlinger, Winnifred, wid. Henry, Co. C, 2nd U. S. Drag., Indian War, Ctf. No. 6127. Wid.'s pension appl. filed Sept. 13/02; B. L. appl. filed June 24/03.

23. Wurzback, Kate, wid. Charles L., Co. I (or C?) 2nd U. S. Drag., Indian War, Ctf. No. 6419. Widow's pension appl. filed Nov. 15/02; B. L. appl. filed Sept. 28/03.

III.

Cases Which Came up through Pension Correspondence, but in Which Pension Claims Were Not Filed by Stevens & Co., Bounty Land Applications Filed and Prosecuted but not Purchased by Them.

24. Dow, Nathaniel, U. S. Navy, Mexican War. Ctf. No. 13653. B. L. appl. filed Nov. 6/03. This case was evidently developed from a communication received by Stevens & Co. from the claimant direct, they having communicated with him concerning a pension matter in which Alex. Kenaday had been his former attorney, Stevens & Co. being Kenaday's successors.

25. Harrell, Elizabeth, wid. Henry H. W., Capt. Redding's Co. Fla. Vols., Indian War; B. L. appl. filed Feb. 28/06. This case came to Stevens & Co. from E. L. Hendon, a correspondent at Bonifay, Fla., they having previously, in November, 1905, secured a bounty land warrant for the widow of Stephen E. J. Harrell, a relative no doubt, both soldiers having served in the same regiment.

26. Pygall, John S., *et al.*, child of Thomas, Co. G, 1st Mich.
4—1941A

Vols., Mexican War. Duplicate bounty land appl. filed Feb. 11/05. This case was developed from a communication dated Aug. 5/03, received by Stevens & Co. from John S. Pygall of Rosendale, Wis., one of the children of the soldier. He was also in communication with Stevens & Co. concerning his right to an increase of pension.

87

IV.

Bounty Land Cases Not Developed from Pension Cases, Prosecuted and Purchased by Stevens & Co.

27. Besser, James, Texas Rangers, Indian War, Ctf. No. 5765. B. L. appl. filed March 22/06. Developed either from a communication received by Stevens & Co. from claimant direct or through T. E. Humphrey, attorney.

28. Clark, Robert, Co. D, 1st Miss. Rifles, Mexican War, Ctf. No. 20117. B. L. appl. filed Jan. 20/04. Developed either from a communication received by Stevens & Co. from the claimant direct, or through Messrs. Dupree & Pool, attorneys, at Victoria, Tex., who were also instrumental in sending them the case of Pauline Clark.

29. Eaton, Mary E., wid. Thomas, U. S. Navy, Mexican War, B. L. appl. filed Oct. 26/04. Developed either from a communication received by Stevens & Co. from the claimant direct or from Henry Hollyday, Jr. of Easton, Md. who wrote in her behalf.

30. Frakes, Nathan, 1st Ky. Mil., War of 1812,—Letitia J. Hickman, child. Minor's B. L. appl. filed May 10/04. Developed either from a communication received by Stevens & Co. from Letitia J. Hickman, or through R. H. Wade, an attorney in St. Joseph, Mo.

31. Gipson, Sallie, wid. Frederick F., Capt. Cherry's Tenn. Vols., Indian War, B. L. appl. filed Sept. 6/04. Developed either from a communication received by Stevens & Co. from the claimant direct, or through G. N. Helvenston who lived in claimant's locality and who wrote them in her behalf.

32. McKean, Wm. C., Texas Mtd. Vols., Mexican War, Ctf. No. 16549. B. L. appl. filed March, 3/05. Developed either from a communication received by Stevens & Co. from the claimant direct, or through F. B. Tegener of Seguin, Tex., who wrote them in his behalf.

33. McQuage, Daniel P., child of James, Palmetto Regt. S. C. Vols., Mexican War. B. L. appl. filed Nov. 16/03. Developed either from a communication received by Stevens & Co. from Daniel P. McQuage, or from Hon. Milton McLaurin, of Bennetsville, S. C., who wrote them in behalf of the child.

34. Reddick, Sallie B., wid. Jonathan, 3rd Ills. Vols., Indian War. B. L. appl. filed Jan. 9/05. Developed by Stevens & Co. either from a communication received from the claimant direct, or from some one who wrote them in her behalf.

88 35. Shirkey, John (dec'd), Capt. Rowland's Co. Va. Mil., War of 1812, Pauline Clark, child. Minor's B. L. appl. filed June 18/04. Developed by Stevens & Co. either from a communication received from the claimant direct or from Dupree &

Pool, attorneys, Victoria, Tex. who were also instrumental in sending us the case of Robert Clark.

36. Stevens, Eliza, wid. Edward A., Co. H, 3rd Tex. Vols., Mexican War. B. L. appl. filed Aug. 11/04. Developed by Stevens & Co. either from a communication received from the claimant direct, or from some one who wrote them in her behalf.

37. Teel, George (dec'd), War of 1812, Elvira E. Graves, child. Duplicate B. L. appl. filed Oct. 1/03. Developed by Stevens & Co. either from a communication received direct from the claimant or from J. W. Draper of Gainesboro, Tenn. who acted for her in bringing the matter to their attention.

(NOTE.—The Thornton case in which a warrant was refused, was developed from the pension case of the claimant.)

89

(Copy.)

ROSENDALE, FOND DU LAC CO., WIS., *Dec. 5, 1906.*

Mr. Milo B. Stevens.

DEAR SIR: I have just received today a duplicate land warrant from the department of the interior at Washington also informing me that I owe you ten dollars fee for attorneys fees for prosecuting the claim, i intend to do just as i agreed with you, if you will send me a draft on the bank of rosendale, at Rosendale Wis. for one Hundred Dollars i will sing the warrant over to you, if you dont want to trust me, you can send it in charge of Frank Bowe cashier of Rosendale Bank and i will transfur the warrant to you, send any papers you want me to sign for transferring the warrant to you.

90

Yours Respectfully
(Signed)

JOHN S. PYGALL,
Rosendale, Fond du lac Co.

P. S.—Answer soon as possible.

91

(Copy.)

Office of Milo B. Stevens & Company, Solicitors of Claims and Patents, Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

H—AW

WASHINGTON, *December 12, 1906.*

Mr. John S. Pygall, Rosendale, Wis.

DEAR SIR: We have your favor of the 5th instant informing us that you have received from the Pension Bureau the duplicate bounty-land warrant which you made application for through us. You also say that you are now willing to carry out your agreement to sell it to us.

In reply we would say that when we entered into the agreement to purchase the warrant from you for a cash consideration we believe-, and still believe, that we had, and you had a perfect right to do so, but we have recently learned that the Pension

92

Bureau does not look with favor on transactions of the like, and under the circumstances we have concluded to ask that you make such disposition of the warrant as you see fit, and that you pay us our fee of ten dollars for having secured it for you.

Very respectfully,
(Signed)

MILO B. STEVENS & CO.

93

(Copy.)

ROSENDALE, WIS., *Dec.* 14, 1906.

Mr. Milo B. Stevent,

SIR: Yours of the 12 of December is at hand and in reply will say, that wee all think that wee are not under any obligations to pay you any attorney's fees, as you agreed to prosicute the claim and that we ware not to be to any expense whatever providind that wee would sell the land warrant if issued to you for the sum of one hundred dollars, wee all signed an agreement to do so, the warrant is issued, and the bureau of pensions now has nothing to do with it and wee are ready to sell it to you as wee agreed to, will you buy it, please answer this and let me know,

94 Yours Respectfully
(Signed)

JOHN S. PYGALL,
Rosendale, Fond du lac Co., Wis.

95

(Copy.)

G. B. Graves.

J. J. Pate.

Graves & Pate, Dealers in and Manufacturers of Band Sawed Hardwood Lumber, Perfectly manufactured, Oak, Ash, Poplar, Chestnut, Basswood, Hickory Etc.

RED BOILING SPRINGS, TENN., *May* 16, 1907.

Messrs. Milo B. Stephens & Co., Washington, D. C.

GENTLEMEN: The ch and statement sent to E. E. Graves received and noted and will say an officer told us that this claim was placed in the Northwest on pine timber land. I will kindly ask you to write by return mail to whom you sold this claim and in what State it is was placed also Township Range & section. Please give us all the facts so it won't be necessary to trouble the pension office to find out we will await your reply.

Very rept.,
(Signed)

GEO. B. GRAVES.

96

EXHIBIT "D."

Filed June 1, 1908.

Before the Secretary of the Interior.

50621.

In the Matter of MILO B. STEVENS & COMPANY.

Additional Memoranda in Behalf of the Respondents.

I.

The insinuation of the Commissioner's report that the respondents had improperly obtained information in aid of their practice in purchasing warrants is treated in pages 47 and 48 of the Brief in behalf of the respondents, heretofore filed.

In addition to what is there stated, the following is submitted as especially worthy of consideration on the point.

The affidavit of Frank D. Fawcett, Chief Clerk of the Washington office of the respondents, heretofore filed, and from which an extract is set forth in the Brief, referring to the decision in the case of Maginnis, rendered February 5, 1902, states as follows:

"This decision overturned the practice that had existed in the General Land Office since the passage of the act of March 2, 1889—a period of about thirteen years—in the matter of the location and use of bounty land warrants. This decision had the effect of giving said warrants a temporary speculative value. The result was that considerable activity was shown by scrip dealers and others in the matter of trying to purchase bounty land warrants. During this activity, the firm appeared as the attorneys of record before the Pension Bureau between 1901 and 1906, as before stated, in
97 over 4,000 claims for increase of pensions in behalf of Mexican war survivors, Indian war survivors, Indian war widows and Mexican war widows. This was the identical class which might have title to bounty land warrants. The result was that a large number of the clients of the firm wrote the firm concerning bounty land titles. In a number of cases, perhaps a dozen or more, I looked into the matter at the Pension Bureau and found that as a rule they had all received the full 160 acre bounty land warrants. In view of this fact, and because the inquiries thereafter became so numerous, the firm submitted to the Pension Bureau the question whether it should require these prospective clients to go to the expense of executing formal applications for the purpose of finding out whether or not there were bounty land warrants due them. The Commission consented to waive the filing of formal applications and directed that the information be given the attorney, either upon his presenting a letter from his client, or upon the written request of the attorney for information. This practice was followed in the Pension Bureau from about November, 1902, to some time during the latter part of

1905, when it was abolished, and thereafter formal applications had to be presented from the applicants."

In view of the great, and practically unmanageable accumulation of papers in an office doing business of its kind so extensively as was done by the respondents, it was a necessary practice with them to destroy the papers in any given case upon its completion, and to retain the record thereof in card form for possible future reference, a practice well known to the Bureau by reason of the numerous examinations by special examiners into cases passing through the office of the respondents. Accordingly, the original evidence of the firm's dealings with the Bureau in respect of obtaining information as to outstanding or unsatisfied claims for land warrants is, in the great majority of cases, wanting; but, fortunately, search among the firm's records has resulted in the discovery of a few illustrative papers showing the entire openness and freedom with which inquiries were made by the firm of the Bureau and information furnished by the Bureau to the firm; a method and course of business between attor-

98 neys and the Bureau which was not, however, confined to the firm, but was universal. The papers referred to are submitted herewith, numbered in blue pencil from one (1) to ten (10), inclusive.

No. 1 is a retained carbon copy of a letter of the firm to the Commissioner of Pensions, of date May 26, 1903, asking information in behalf of the widow of one Kennedy; and No. 2 is a similar paper in behalf of the widow of one Wurzbach. For the reason stated, the firm is unable to produce the answer of the Bureau to these communications, but the members of the firm and its office force know, as a fact, that an answer was given in each instance, a fact which the file records of the Bureau will show.

No. 3 is a memorandum slip containing in ink the name of the soldier, the command to which he belonged, and the war in which he served, followed by a notation of the number of acres and act, and, at the bottom, the name of the firm, all in the handwriting of Mr. Fawcett; annexed is a memorandum in the handwriting of some clerk in the Pension Bureau, unknown to the respondents, replying to the implied inquiry of the slip, showing that, on one account, the soldier had received eighty acres, and, on another account, an additional eighty acres, making his full allowance of one hundred and sixty acres. The memoranda in lead pencil on the main slip are in the handwriting of a clerk of the firm and indicate information obtained by that clerk from the Land Office.

No. 4 is a letter of the respondents of May 26, 1903, inquiring whether one Champie had received the full one hundred and sixty acres bounty land warrant due him, and No. 5 is the enclosing jacket returned by the Bureau in response to this inquiry, informing the
99 firm that the records of the Bureau failed to show the receipt of any claim for bounty land in Champie's name. The letter of the respondents in this case shows by the stamp thereon that it went directly to the First Deputy Commissioner, and the stamp on the back shows that it was referred to the Old War and Navy Division; while the enclosing jacket in which it was returned

to the respondents shows that it came to them from that division, over the signature of the Commissioner.

No. 6 is a letter of the acting Commissioner of Pensions, of August 26, 1903, informing the respondents that it does not appear from the records of the Bureau that a claim for bounty land for one Hughes had ever been received. This was evidently sent in response to an inquiry of the respondents in the premises, they being the attorneys of record in the pension claim of the widow of Hughes.

No. 7 is a communication from the Commissioner informing the respondents that the records failed to show that one Keating had received a land warrant, evidently written in response to an inquiry of the respondents in the premises. As to both Nos. 6 and 7, the records of the Bureau will confirm the statements herein made.

No. 8 is a memorandum slip similar to No. 3, and explains itself in the light of what is said about the latter. All of the handwriting is that of Mr. Fawcett, except the following: "337,031—Rej.—'55," which is in the handwriting of some clerk in the Bureau, unknown to the respondents.

No. 9 is a slip, similar to Nos. 3 and 8, except that it contains the following in the handwriting of a clerk of the Bureau, unknown to the respondents: "56,569—80—50", indicating that the soldier had received warrant No. 56,569 for eighty acres under the act of 1850, leaving him or his heirs entitled to an additional eighty
100 acres.

No. 10 is a letter of the Commissioner of March 29, 1905; acknowledging receipt from the respondents of the claim of Betty Long, child of the soldier referred to in No. 9, for the remaining eighty acres. The following in this letter is worthy of note, by reason of the proximity of the date of the letter to the abolition of the practice of furnishing information to attorneys, as described in Fawcett's affidavit:

"In any communication you may find it necessary to address this Bureau relative to bounty land claims, the name of the applicant, the name of the soldier, his service, and the number of the claim must be given as furnished above,"

referring to the identification memorandum in the upper left hand corner of the communication, showing that, even as late as the date mentioned, namely March 29, 1905, the Bureau was furnishing to attorneys a form of inquiry to facilitate the work of the Bureau in furnishing the desired information, thus wholly negating any idea that any resort to indirectness or subterfuge was necessary in order to ascertain from the Bureau the exact status of every possible claimant for a land warrant during the continuance of the practice mentioned.

Of the paper- thus submitted, those which are in the form of letters took the usual course of such, but the slips, namely, Nos. 3, 8 and 9, were presented to either the chief of the Old War and Navy Division, or one of his assistant chiefs, and the practice of filing these slips grew out of a suggestion of the Bureau in order to

simplify and shorten the process of inquiry and avoid the necessity of reply by letter.

It will also be noted that some of the cases to which these papers refer are named in the proceedings against the respondents, and the records of the Bureau will show that in such, and in all the cases in which inquiries were made by the respondents, the practice of the Bureau, as thus considered, was followed.

101

II.

In the answer of the respondents, and in the brief in their behalf, heretofore submitted, (pp. 52 to 54), reliance is had upon the claim that, when the respondents entered the field of procuring the warrants in question they found an established practice of many years' standing of attorneys dealing in warrants of their own procurement, which practice the respondents had reason to believe, and believed, was with the full knowledge of the Bureau, and which not only was not the subject of any rule, but also had not been made the subject of any criticism by the Bureau, according to either the knowledge or surmise of the respondents.

Since the brief for the respondents was submitted, it has recurred to the respondents, and for the first time come to the knowledge of counsel, that an analogous practice in the General Land Office existed for many years in connection with the issue of certificates of soldiers' additional homestead rights under Sections 2306 and 2307 R. S. U. S. The nature and history of these certificates sufficiently appear from the General Land Office Circular, showing the manner of proceeding to obtain title to public lands, issued January 25, 1904, (pp. 26 and 27), in which the matter is treated under the subhead "Soldiers' Additional Homestead Entry." From what is there set forth, it will be seen that any soldier who, prior to June 22, 1904 (1874), the date of approval of the Revised Statutes, had made a homestead entry of less than one hundred and sixty acres, might enter an additional quantity of land, either adjacent to his former entry, or elsewhere, sufficient to make, with the previous

entry, one hundred and sixty acres, (Section 2306, R. S.); and that this right was extended by Section 2307 to the soldier's widow, if unmarried, otherwise to the minor orphan children. The two sections mentioned are to be found in the circular at page 132. It was at first held that the right in question was personal, and not transferable, and that, before the right could attach, it was necessary for the soldier or other holder of the right actually to locate the land covered by the original entry, reside thereon, and cultivate the same, and that similar requirements existed in case of the additional right; but, under the decision of the Supreme Court of the United States, in *Webster v. Luther*, 163 U. S. 331, the additional right was afterwards held to be assignable without restriction, and that residence and cultivation were not required in its exercise, either by the original beneficiary, or his assignee, whether the original entry was perfected or abandoned. (24 L. D. 502.)

102

The circular, after setting forth the foregoing, in effect, contains the following important statement:

"It was formerly the practice, on proof of military service and original entry, under Section 2306, Revised Statutes, to *issue a certificate* in the name of the soldier-entryman, showing his additional right and its area, but the practice was discontinued by circular of February 13, 1883, (1 L. D. 654), and it is held that there is no statutory authority for the same and that the soldier may obtain the right for himself or sell it to another without certification. (23 L. D. 152)."

The circular of February 13, 1883, in terms provided that the rules therein set forth would not be deemed to apply to cases where the additional right had theretofore been certified by the Land Office, nor to cases pending at the date of the circular, or which might be filed in the office prior to March 16, 1883. Prior to May 17, 1877, there were practised and permitted certain irregularities in the administration of Sections 2306, and 2307, R. S., which led the De-

103 department to issue its circular of the latter date, prescribing, among other things, the necessity of a formal application in respect of a given additional right and the issue of a certificate therefor, and, from that date until March 16, 1883, the practice prescribed by the last named circular was followed. During the period between the two dates, May 17, 1877, and March 16, 1883, (and later where the applications had been filed in the General Land Office prior to March 16, 1883), it was the regular practice of the office to issue to soldier-entrymen or their widows or orphan minor children, in accordance with Sections 2306 and 2307 R. S. U. S., *certificates* of soldiers' additional homestead rights under those sections. To obtain such a certificate the applicant filed the several papers required by the Land Office, the application by the soldier, the widow, or the guardian of minor heirs, as the case might be, being required to be under oath taken before a clerk of court, exclusively. As in other land cases, the applicant could file the papers personally, but no case is known to the respondents in which an attorney was not employed, and it is believed that no such case can be found.

In almost every case of an application of the kind under consideration, as the records of the Land Office will show, the attorney of record was purchaser of the certificate, when issued, and the certificate was delivered to such attorney when issued, the bargain to buy usually, if not always, having been made between the attorney, on the one hand, and the applicant, on the other, before the application was filed. Such being the case, the applicant usually executed two powers of attorney, both in blank, one to locate the certificate, and the other to sell the land after obtained on the location issued. These two blank powers were not filed in the Land Office,

104 but were retained by the attorney who, through one, secured the certificate after issue, and through the other, sold it, if he did not locate the land personally. This practice was, as of course, known to the officers of the Land Office, and to all

persons engaged in presenting applications of the kind under consideration.

Under the practice thus existing and permitted, the applicants, in many instances, after having, through the powers of attorney mentioned, authorized and enabled their attorneys of record to procure the certificates, when issued, set up the contention that, by parting with the certificates, they had not parted with the right of location thereby evidenced, and that, in fact, the certificates were only evidences of the right, and that the right still remained in themselves, the applicants; wherefore such applicants sold and transferred, or attempted to sell and transfer, their respective rights as something different from, and independent of, the certificates. The natural result of such a practice on the part of the applicants is obvious, and, being brought to the attention of Congress, that body, on August 18, 1894, (28 Stat. L. 397), to be found on page 213 of the circular of January 25, 1904 (1884), enacted as follows:

"That all soldiers' additional homestead certificates heretofore issued under the rules and regulations of the General Land Office under section twenty-three hundred and six of the Revised Statutes of the United States, or in pursuance of the decisions or instructions of the Secretary of the Interior, of date March tenth, eighteen hundred and seventy-seven, or any subsequent decisions or instructions of the Secretary of the Interior or the Commissioner of the General Land Office, shall be, and are hereby, declared to be valid, notwithstanding any attempted sale or transfer thereof; and where such certificates have been or may hereafter be sold or transferred, such sale or transfer shall not be regarded as invalidating the right, but the same shall be good and valid in the hands of *bona fide* purchasers for value; and all entries heretofore or hereafter made with such certificates by such purchasers shall be approved, and patent shall issue in the name of the assignees."

105 After this enactment, the Land Office, on October 16, 1894, issued a circular containing directions to enable assignees of the certificates to exercise, in their own names, the right of entry confirmed by the statute, a copy of which circular, for convenience, is submitted herewith, and marked, in blue pencil, eleven (11); and the circular of January 25, 1904, (p. 27), referring to this circular of October 16, 1894, and the enactment of Congress of August 18, 1894, further prescribed a specific mode of procedure in the premises.

The effect and intent of the enactment mentioned, as recognized by the circulars referred to, were plainly to recognize the possession of the certificates by the attorneys who had received them as, in all respects, valid and regular, and the object and effect of the enactment were to secure to the certificate holders (in many cases being, as stated, the attorney of record), the additional right of entry which the law had conferred upon the soldier-entryman. A clearer case of recognition and approval of the practice under discussion, namely, of attorneys buying the rights of their own clients in respect of public lands for which they were prosecuting the cases of those clients, can-

not be conceived; and, in this connection, the circular of October 16, 1894, contains the following pregnant provision:

“To enable assignees of these certificates to exercise in their own names the right of entry confirmed by this statute, it is directed that the certificate itself shall, in each instance, prior to any entry by the assignee, be presented to this office for examination and additional certification covering the fact of assignment. Holders of such certificates desiring to exercise a right of entry in their own names must file such certificates in this office, together with satisfactory proof of ownership and of *bona fide* purchase for value. If, upon examination, the proof so filed is satisfactory, an additional certificate will be attached to the original authorizing the location thereof, or entry of land therewith, in the name of the assignee or his assigns.
106 You will allow no entries in the names of assignees except upon presentation of such additional certificates issued by this office. When such additional certificates are presented, you will issue homestead papers and the final certificate and receipt, in the name of the transferee, referring to him in said papers as the “assignee” of the soldier.”

As further evidence of the existence, nature and extent of the practice under consideration, a letter to the respondents by Henry N. Copp, Esquire, of November 16, 1907, marked, in blue pencil, twelve (12), is submitted herewith, and careful reading thereof is invited.

In the light of all the foregoing, it is impossible to doubt that the practice under consideration was as generally well recognized and acquiesced in by all possible to be concerned as any ever known or followed. And the similarity between this practice and the one for which the respondents are sought to be brought under judgment is too obvious to call for amplified comment. In each case, the subject matter of employment was the bounty of the Government in each case that bounty was obtainable only upon application in prescribed form, to be followed through prescribed procedure; in each case, the applicant was required by the necessities of the circumstances to employ an attorney to represent him; in each case, the attorney representing the applicant openly and freely dealt with the client in respect of the subject matter of his employment; and, in each case, for a long period of time, the attorney was, without rebuke, or even comment, permitted to consummate the transaction involved in the dealing with the client. The door is, therefore, effectively closed to any discussion, or even contention, as to the freedom of the attorney from any appearance of blameworthiness in the premises.

III.

In the brief heretofore submitted, (pp. 83 to 91), reliance
107 is had, and emphasis laid, upon the necessity of wilful corruptness of motive as essential to the reprobation of an attorney or other practitioner whose professional conduct is brought under inquiry to justify his condemnation. It being shown in this case that the respondents, if not invited, were, at least, quieted and, indeed, encouraged, in the practice which they frankly admit them-

selves to have followed; and the respondents, by way of reparation, having voluntarily done all in their power, and more than could have been required of them through any legal demand, it is confidently submitted that they are of right entitled to ask that the citation against them and the charges involved be dismissed, with the judgment that they have been guilty of nothing calling for the criticism, and, much less, the reprobation, of the Department.

Respectfully submitted,
(Signed)

HENRY E. DAVIS,
For the Respondents.

108

Before the Secretary of the Interior.

50621.

In the Matter of MILO B. STEVENS & COMPANY.

Brief in Behalf of the Respondents.

I.

Statement of the Case.

On April 13, 1907, the Commissioner of Pensions cited Eugene E. Stevens and Thomas R. Harney, described as doing business under the firm name of Milo B. Stevens & Company, attorneys, to answer certain charges of improper, unprofessional, and illegal conduct in connection with each of fourteen claims for military bounty land, jointly filed by them, and mentioned in the Commissioner's citation; which improper, unprofessional, and illegal conduct was alleged to consist in resorting to the methods and in committing the specific alleged offenses therein set forth.

The citation allowed Messrs. Stevens and Harney a period of thirty days from the date of its receipt to show cause why it should not be recommended to the Secretary of the Interior that each of them be disbarred from practice before the Pension Bureau, and called for answer under oath. At the request of counsel, the time to answer was enlarged, and the answer was filed with the Commissioner on May 21, 1907. Upon receipt of the answer, counsel was notified that a period of ten days would be allowed for submission of evidence in support of the allegations of the answer, which time, in turn,
109 was also verbally extended, at the request of counsel, because of counsel's engagement in a cause coming on for trial in the Supreme Court of the District of Columbia on June 3 and continuing until and including July 3, 1907. It was understood and believed by counsel that this latter extension was to cover the period to be occupied by the trial mentioned and a reasonable time thereafter. The officers of the Bureau, however, seemingly understanding otherwise, took up for consideration the citation and answer, in the absence of the suggested evidence, and on June 12, 1907, the Commissioner submitted to the Secretary of the Interior a report recommending an order disbarring the respondents from further practice before

the Bureau. Notice of this action was communicated to the respondents and counsel, and upon receipt of such notification counsel immediately called upon the Commissioner, and, after stating his understanding of the extension of time, as aforesaid, was allowed until and including the 24th day of June to submit the evidence referred to. On the last-mentioned day, namely, June 24, 1907, counsel submitted the evidence which was supposed to be called for, in the form of a memorandum and various affidavits, six in number, and on the following day, namely, June 25, 1907, without any other or further report, and without any apparent consideration of the evidence submitted, and upon his original report of June 12, 1907, unchanged in any particular, and without any reference whatever to the evidence submitted, the Commissioner of Pensions again recommended an order of disbarment.

Thereupon, on request of counsel, the Secretary of the Interior accorded the respondents a hearing before himself, upon which hearing this memorandum is submitted.

In his report the Commissioner considers in all thirty-eight cases of claims for military bounty land, being twenty-four in number in addition to those named in the citation, and he sets forth and considers the said thirty-eight claims in an order of his own
110 choosing and without regard to the order followed in the citation. In dealing with the report, therefore, the Commissioner's order of consideration of the claims is numerically followed, and the designation of the claims by number, as hereinafter appearing, is in each instance by the number appearing in the Commissioner's report.

Of the thirty-eight cases named in the report, the following, as stated in the report itself (page 143), are those mentioned in the citation, namely, Nos. 6, 19, 24, 25, 26, 28 to 34, both inclusive, 36, and 37; and the following are those not mentioned in the citation, namely, Nos. 1 to 5, both inclusive, 7 to 18, both inclusive, 20 to 23, both inclusive, 27, 35, and 38.

Of all the thirty-eight cases, those in which Messrs. Stevens and Harney were attorneys of record and bought the warrants involved are those mentioned in the citation, with the exception of Nos. 36 and 37, being twelve in number, and the following, not mentioned in the citation, namely, Nos. 2, 3, 10, 12, 15, 16, 17, 21, and 22, being nine in number, the total thus being twenty-one. In No. 38 neither respondent was attorney, and the warrant was bought by Mr. Harney individually in January, 1904, or more than three years before the citation.

According to fundamental principles and the formal adjudication of the Department, heretofore had, after full consideration, under similar conditions, all of the cases mentioned in the Commissioner's report, but not mentioned in the citation, should be omitted from consideration on this hearing; but, even if it be thought possible or proper to give them any consideration whatever, they may be dismissed from the account for the reasons respectively indicated.

No. 1—Ochiltree.—The statement that "there is no evidence before the Bureau as to how much was paid by Stevens & Co. for the war-

rant, or that restitution was made to the warrantee" is a gratuitous insinuation, wholly without support, that the warrant was
111 bought by either respondent. In fact, it was not; the report contains no accusation in respect of the case, and the case was not investigated by the Bureau.

No. 2—Smith.—The report states that "the warrant was delivered to the warrantee, and there is no evidence as to the sale of, or price obtained for, the warrant." In fact, as admitted by the answer of the respondents, this warrant was bought by the respondents and refundment accordingly made, but the report makes no accusation and presents no evidence touching the circumstances of the transaction.

No. 3—Bothwell.—The warrant in this case was bought by the respondents and refundment made, but the report makes no accusation and presents no evidence touching the circumstances of the transaction.

No. 4—Crowley.—There was no investigation and there is no accusation in this case. The respondents did not buy the warrant, which went directly to the warrantee.

No. 5—Salter.—The same is true of this case.

No. 7—Semlinger.—Respondents did not buy the warrant, which went directly to the warrantee, and there is no accusation in the case.

No. 8—Duret.—There was no investigation and there is no accusation in this case. The respondents did not buy the warrant.

No. 9—Keating.—There was no investigation and there is no accusation in this case, and the respondents did not buy the warrant, which went directly to the warrantee.

No. 10—Bull.—There was no investigation and there is no accusation in this case, and the respondents, as shown by their answer, bought the warrant and made refundment. There is no evidence touching the circumstances of the transaction other than as furnished by the respondents themselves.

The report states as follows: "On February 11, 1904, Milo B. Stevens & Co. submitted to the Land Office said warrant bearing said assignment, to which the signature of Thomas R. Harney appears
112 as one of the attesting witnesses, though the assignment purports to have been executed in Orange county, New York."

The insinuation of this statement, that Mr. Harney attested the assignment in Washington, although it was made in New York, is illustrative of the animus and extreme unfairness of the report. Mr. Harney in fact attested the assignment where it was made, namely, in Orange county, New York, where he was at the time.

No. 11—Kennedy.—There was no investigation and there is no accusation in this case. The respondents did not buy the warrant, which went directly to the warrantee.

No. 12—Hollenbeck.—There was no investigation and there is no accusation in this case. The respondents, as shown by their answer, bought the warrant and made refundment to the warrantee, but there is no evidence in the case touching the circumstances of the transaction, other than as furnished by the respondents themselves.

No. 13—Wurzbach.—There was no investigation and there is no accusation in this case. The respondents did not buy the warrant, which went directly to the warrantee.

No. 14—*Champie*.—The same is true of this case.

No. 15—*Cannon*.—There was no investigation and there is no accusation in this case. The respondents bought the warrant and made refundment, as is shown by their answer, but the record presents no testimony as to the circumstances of the transaction.

No. 16—*Clark*.—The same is true of this case.

No. 17—*Fitzgerald*.—The same is true also of this case.

No. 18—*Leonard*.—There was no investigation and there is no accusation in this case. The respondents did not buy the warrant, which went directly to the warrantee.

No. 20—*Shannon*.—The same is true of this case.

No. 21—*Maxwell*.—There was no investigation and there is no accusation in this case. The respondents bought the warrant and made refundment, and the record presents no evidence touching the circumstances of the transaction.

No. 22—*McQuage*.—The same is true of this case.

113 No. 23—*Hughes*.—There was no investigation and there is no accusation in this case. The respondents did not buy the warrant, which went directly to the warrantee.

No. 27—*Chambers*.—There was no investigation and there is no accusation in this case. The respondents did not buy the warrant.

No. 35—*Harrell*.—The same is true of this case.

No. 38—*Bacot*.—The respondents were not attorneys in this case and the purchase of the warrant was the individual act of Mr. Harney, upon the offer and request of the legal holder and owner. There is no accusation touching this transaction, which, as already stated, took place more than three years before the citation. This, as the report indicates, is the only case in which the transaction was individual to either respondent. All of the other transactions were on the firm accounts, though, for convenience, the name of but one member was used.

Apart from the fact that these twenty-four cases are not mentioned in the citation, and are therefore not proper to be considered in the premises, the showing thus made respecting them conclusively establishes their utter insignificance, even if properly the subject of consideration; and, except so far as they may seem to justify comment upon the attitude and animus of the Bureau of Pensions and its officers, they will not further be mentioned herein.

II.

Examination of the Cases Named in the Citation.

The remaining cases treated in the Commissioner's report, being those mentioned in the citation also, will be dealt with in the order of their treatment, except Nos. 6, Hogan; 25, Clary; 26, Gipson; 32, Stevens; and 34, Besser, which will be reserved for the last, for the reason that they are grouped in the citation under the general designation "Additional Cases," and respecting them the allegations of the citation are in general terms only; and except
114 also No. 29, Eaton, which will be treated in connection with No. 37, Thornton, as the charges of the citation in the former are de-

pendent upon those in the latter, and the two cases may thus more appropriately be considered together.

In dealing with each of the cases to be noticed, the method will be observed, as far as practicable, of setting forth, first, the allegations of the citation; secondly, the statements of the answer; thirdly, the material statement and comments of the report; and, fourthly, the evidence, if any, submitted in support of the answer and unnoticed and, indeed, ignored in the report.

Case No. 19—ELVIRA E. GRAVES.

The allegations of the citation in this case are as follows:

1. That on October 5, 1903, the respondents filed an application for the issuance of a duplicate warrant, which was issued on April 27, 1904, and turned over to them on May 19, 1904, and that during the month of May, 1904, they induced the claimant to assign the warrant to them for the sum of one hundred dollars, and on July 30, 1904, the warrant was sold, through William J. Johnston, of this city, to one Matthews for three hundred and sixty-four dollars and ninety cents; and,

2. That the said Johnston, after having had a conversation with the respondents over the telephone, refused to testify with reference to the price paid by him for this and certain other warrants, basing his refusal on the alleged ground that he regarded that question as one requiring the disclosure of his private commercial transactions.

The statements of the answer are as follows:

1. It is true that the respondents made the application stated and received an assignment of the said warrant for the sum of one hundred dollars. They have no knowledge as to the allegation that the said Johnston sold the warrant for the sum mentioned, except on information and belief, and in selling the said warrant the said Johnston was not acting for them in the transaction.

115 2. As to Mr. Johnston's refusal to testify, as alleged, the fact is that Mr. Johnston did call on the respondents by telephone, stating to Mr. Harney, who answered the call, that a special examiner was at his, Johnston's office and desired to take his deposition with respect to certain land warrants that the respondents had sold him, and also as to the price he paid them for the same. Mr. Harney informed Mr. Johnston that he was at liberty, so far as the firm was concerned, to give the information, and also informed Mr. Johnston that the firm would give the information to the special examiner himself, if he would call at its office. Mr. Johnston's refusal to give the information was on his own responsibility and not because of any advice, request, or suggestion whatever from the respondents or either of them, and it was believed that Mr. Johnston would so testify, if requested to do so.

The material statements of the report are as follows:

That the warrantee's son-in-law, one Draper, took up the matter of obtaining for her a duplicate warrant by first writing to George E. Lemon; that the respondents answered his letter, stating that Lemon was dead and that they had his business; that before the respondents would agree to prosecute the case they required the applicant to sign

a contract to deliver the warrant to them for one hundred dollars, they to bear all the expenses in the prosecution of the claim; that, according to one witness, respondents stated that one hundred dollars was all the warrant would be worth, and that neither the applicant nor her son-in-law had any means of knowing whether the warrant would be worth more than one hundred dollars; that the warrant was subsequently sold to one Matthews for three hundred and sixty-four dollars and ninety cents, and that the respondents afterwards paid the warrantee two hundred and thirty dollars.

It will be observed, upon comparison, that *the so-called evidence submitted by the report relates in great part to matters not mentioned in the citation, and consists, so far as material matters are concerned, of ex parte statements, taken in the absence of the respondents,*
 116 *without opportunity on their part of cross-examination and without notice to them, and is now submitted for consideration without any opportunity, or even recognition of right, on the part of the respondents to meet the same.* The comment is, to a greater or less extent, applicable to every one of the cases treated in the report, and *it is respectfully but earnestly submitted that all such so-called evidence is not entitled to be, and should not be, considered on this hearing.* This suggestion is more fully set forth and enforced hereinafter. The evidence submitted in behalf of the respondents (Exhibit Refundment and letter of George B. Graves), shows that the warrantee was paid by the respondents the entire financial benefit derived by them from the sale of the warrant, over and above the amount received, less the proper lawful fee for procuring the warrant, and (sworn answer of the respondents and affidavit of William J. Johnston), that in selling the warrant Johnston was not acting for the firm; that he was told by the respondent Harney that he, Johnston, was at perfect liberty, so far as the respondents were concerned, to give the desired information, and that his, Johnston's, refusal to give the certain information mentioned in the citation was on his own responsibility and not because of any advice, request, suggestion, or hint of what kind soever from the respondents' firm or any member thereof. By a significant omission, the report fails even to allude to this refusal by Johnston.

Case No. 24—JOHN SHIRKEY'S HEIRS.

The allegations of the citation in this case are as follows:

That the respondents filed the application and prosecuted the claim to a successful issue; that the warrant was delivered to them on September 30, 1904; that they induced the claimant to assign the warrant to the respondent Stevens on March 23, 1905, for one hundred and fifty dollars; that on April 25, 1905, the respondents sold the warrant for four hundred and thirty-two dollars, and that the warrant was thereafter sold to one Hollcroft for five hundred and forty dollars.

117 The statements of the answer are as follows:

The respondents admit the allegations, except they say that they received no fee in the case, paid other counsel for their

services in connection therewith, and had nothing to do with, and no relation to, the sale to Hollcroft.

The material statements of the report are as follows:

That one Pool, attorney of Pauline Clark, one of the heirs of Shirkey, conducted all the correspondence with reference to the matter; that it was the understanding of Mrs. Clark and her attorney, from the beginning, that the respondents would buy the warrant, as they had bought the warrant which had previously been issued to Mrs. Clark's husband; that neither Mrs. Clark nor her attorney recalls that the respondents made any expression as to the probable value of the warrant; that the warrant was assigned to the respondent Stevens, and that the said respondent assigned the warrant to Hollcroft, who paid therefor five hundred and forty dollars. In contradiction of the report (p. 38), that the respondent Stevens sold (although the word used in the report is "assigned") the warrant to Hollcroft, the report itself shows (p. 42) that Hollcroft bought the warrant from one Wick, through one Kinsworthy.

The evidence submitted in behalf of the respondents (Exhibit Refundment and receipt) shows that the respondents paid over to Mrs. Clark the amount of their profit in the transaction, although the report gives no indication that this fact was discovered by the Bureau's investigation of the case.

Case No. 28—MARGARET MONOGHAN.

The allegations of the citation in this case are as follows:

That the respondents prosecuted the claim to a successful issue and were certified a fee of twenty-five dollars for their services in that behalf; that the warrant was issued and delivered to the respondents; that the respondents induced the claimant to assign the warrant to the respondent Harney for two hundred dollars,
118 and that the warrant was sold to one Abbott by one Fennell for seven hundred and twenty dollars.

The statements of the answer are as follows:

That the warrant was purchased by the respondents for two hundred dollars, but that they had no relation whatever to the sale thereof to Abbott by Fennell.

The material statements of the report are as follows:

That the warrantee, who is a pensioner, can neither read nor write; that one Gillette, postmaster at Stevenson, State of Washington, transacted the business for her; that there was nothing to indicate the probable value of the warrant, and the claimant was not advised as to what the warrant might be worth, but the respondents simply made their offer of two hundred dollars and sent the necessary papers to be signed; that the claimant asked Gillette what she should do, and he asked her if she did not want the land or want to give it to some of her children, and she stated that she did not want the land, but wanted the money, and that Gillette told her that, if that was the case, she might as well sell the warrant, which she did; that Gillette did not know what the warrant might be worth, and did not know of any one who was looking for such things who dealt in them, and

that he did not know of any lands near Stevenson on which such warrants could be used; that the respondents entered, or attempted to enter, into an arrangement with the claimant "in the pending claim" to secure any warrant which might thereafter issue in her behalf "in advance of the filing of the application for the warrant" (a distinct contradiction, as the claim could not be "pending" before the application was filed); that the warrant was assigned to the respondent Harney, who, in turn assigned it in blank, and the name of one Abbott was subsequently inserted in the assignment; that Abbott purchased the warrant from Fennell for seven hundred and twenty dollars, and that the warrantee afterwards received from the respondents four hundred and seven dollars.

The evidence submitted in behalf of the respondents shows (affidavits of Emily F. Camp and Frank D. Fawcett), that the warrant passed out of the possession of the respondents by sale to
119 Messrs. Spalding & Sons, on September 26, 1905, and (Exhibit Refundment and receipt), that refundment was actually made by the respondents as in the other cases.

In this case attention is invited to the voluminous setting forth of the so-called testimony of the claimant, who, being wholly unable to read or write, and having had the whole matter transacted for her by another, manifestly was speaking from hearsay as to every statement made by her, with the possible exception of the remark, "I thank you very much for this interest in an old woman's right" (p. 55), inserted in the report gratuitously, with what animus may be left unsaid.

Case No. 29—MARY E. EATON.

As above stated, this case will be considered hereinafter in connection with No. 37, Thornton.

Case No. 30—LETITIA J. HICKMAN.

The allegations of the citation in this case are as follows:

1. That the respondents induced the claimant to assign her warrant to them for the sum of seventy-five dollars at a time when its worth was not less than seven hundred dollars.

2. That, after originally agreeing to prosecute the claim for a fee of twenty-five dollars, the respondents first offered the claimant two hundred dollars for the warrant, if issued; subsequently offered her three hundred dollars; subsequently, through their agent, secured her to scale the price to two hundred and fifty dollars, and subsequently, through their agent, caused her to agree to sell the warrant for seventy-five dollars; and that, after the issue of the warrant, through their agent, they induced her to assign the warrant to them for seventy-five dollars and paid their agent twenty-five dollars for his services in that behalf.

The statements of the answer are as follows:

1. That it is not alleged that at the time the claimant assigned

the warrant for seventy-five dollars the respondents knew that
120 it was worth not less than seven hundred dollars, and in fact
it was not worth that sum, and that, for reasons referred to,
the value of such warrants was so precarious that it would have been
and was impossible for any one certainly to know the value of the
warrant when to be actually issued.

2. That it is true that the respondents first offered two hundred dollars for the warrant, if issued; that they subsequently raised their offer to three hundred dollars; that subsequently they suggested to their correspondent a compromise on the question of price, and the claimant thereafter consented to accept two hundred and fifty dollars; and that subsequently the claimant agreed to sell the warrant for seventy-five dollars and afterwards assigned the same to the respondents for that sum, and that they paid their correspondent twenty-five dollars for his services in the case.

3. That the relation of the respondents to the case covered a period within two days of one year and four months; that the claim was rejected, appealed, and finally allowed; and that the history of the case made it extremely problematical whether the warrant would ever be procured, and its value would be and was precarious.

The statements of the report touching this case occupy between nineteen and twenty pages of that document, and may be said without offense to be so diffuse and regardless of order as to make any adequate abridgment of them difficult, quite to the point of impossibility. In substance, however, they may be said to be aimed at showing that, after inviting a sale of the warrant at various sums, one of which was as high as three hundred dollars, the respondents procured the warrant for the sum of seventy-five dollars, which latter sum, in the language of the report, the claimant was induced to name, partly through the persuasion of an agent of the respondents and partly through the belief, according to the claimant, that, if she did not name so low a sum, either the case would not have been prosecuted to a result or knowledge of the result would have been withheld from her; and this notwithstanding that the claimant is reported to have written the respondents, in reply to their letter of

September 15, 1904, that she would not agree to take any
121 definite price for the warrant until she knew it would be allowed. The comment of the report (p. 90), that the testimony shows that the respondents secured the written assignment of the warrant before it was issued, is obviously erroneous, as the only pretense in this respect on the part of either the claimant or any other so-called witness is that an agreement to assign, and not the assignment itself, was made before the issue of the warrant—a comment which might be unnoticed, because of its immateriality, were it not one of the many indications of the unconcealable animus inspiring the entire report; and, at its worst, the report may justly be said to establish only that, in view of the delays in the case, for which the respondents were in nowise responsible, the claimant, because of those delays and the ultimate temporary rejection of the claim, in the deferred hope which maketh the heart sick, through whatever course of reflection she may have pursued, offered to take

for the warrant seventy-five dollars, or one hundred and twenty-five dollars less than the lowest sum at any time offered by the respondents. And throughout the so-called testimony purporting to be set forth in the report, there is no statement from any so-called witness that the respondents at any time represented to the claimant that any amount offered by them was all that the warrant was worth, or that they put in the way of the claimant any obstacle to inquiry as to the real value of the warrant, or did or said anything calculated, however slightly, to divert her attention from the line of any such inquiry. On the contrary, the fact stands prominently out that the claimant did not make her offer to sell at the price actually paid until after, in the first instance, she had declined to fix a price in advance of allowance of the warrant, and, in the end, until after she had, by the variation in the amounts mentioned by the respondents, of necessity been put upon her guard and prompted by what would appeal to even the dullest mind to deal at arm's length with the respondents

122 or any one else desiring the warrant. In addition, the report shows that throughout the transaction not only was the claimant herself alert and dealt with both the respondents and their so-called agent with more than usual intelligence and alertness, but also that she had about her a son, daughter, daughter-in-law, and grand-daughter, who, if they are to be believed, were made and kept fully cognizant of the whole transaction and thereby put in a position to advise the claimant and fully safeguard her interests.

The testimony submitted in behalf of the respondents (Exhibit Refundment and receipt), shows that they made full restitution to the claimant, and the report itself shows that the investigation of the Bureau was unequal to discovering, without the aid of the respondents, what amount they in fact received for the warrant.

Case No. 31—SALLIE B. REDDICK.

The allegations of the citation in this case are as follows:

That the respondents filed the application and duplicate articles of agreement in connection with the claim; that the warrant was delivered to them, and they induced the claimant, for the sum of two hundred dollars, to assign the warrant to the respondent Harney, and that the warrant was afterwards sold to one Abbott by one Fennell for seven hundred and twenty dollars.

The statements of the answer are as follows:

That the warrant was purchased by the respondents for the sum of two hundred dollars; that they received no fee in the case; that there were some expenses incidental to the purchase of the warrant, and that the respondents had no relation to the alleged sale to Abbott by Fennell, and the same was not made on their account.

The material statements of the report are as follows:

123 That the claimant received information from the respondents that she was entitled to a warrant; that when she was called upon by a representative of the respondents living at her home, she was told that the terms upon which the respondents would prosecute the claim were twenty-five dollars in cash, or they would allow her two hundred dollars upon the allowance of the warrant

without payment of any fee, and that there was certainly a contract, either written or implied, that she was to let the respondents have the warrant for two hundred dollars, in case of its allowance. There is in the report no suggestion even that the claimant was told or led to believe that the amount offered was all that the warrant was worth, and, on the contrary, the report shows that, in their letter informing her of the payment of the sum of two hundred dollars, the respondents distinctly put the claimant upon notice that they were making a profit in the transaction by stating as follows (p. 98): "It is not our intention to make any location with the bounty land warrant. We have purchased a large number of such warrants and have never made a location with any of them. We purchase and sell them again, and that is where we get our profit."

The evidence submitted for the respondents (sworn answer and affidavit of Miss Camp), shows that the respondents had nothing to do with the sale of the warrant by Fennell to Abbott, and the report itself shows this (p. 98); and the report and the evidence (Exhibit Refundment and receipt), also show that restitution was made to the claimant as in the other cases mentioned.

Case No. 33—WILLIAM C. MCKEAN.

The allegations of the citation in this case are as follows:

That the respondents filed the application and entered into an agreement, by virtue of which the warrant, if issued, was to be assigned to them; that the warrant was issued and turned over to them, they having been certified a fee of ten dollars for services rendered in the prosecution of the claim; and that the warrant was assigned to the respondent Harney and sold by the respondents for two hundred and forty dollars.

The answer admits these allegations, but adds that the respondents waived their fee of ten dollars and made no attempt to collect the same.

124 The material statements of the report are to the effect following:

That the respondents made to the claimant two propositions, offering to prosecute the claim for twenty-five dollars or to procure the warrant, which was for forty acres, without charge to the claimant if he would sell the same to the respondents for fifty dollars; that the respondents did not make any statement or representations as to the value of the warrant; that the claimant accepted the proposition to sell the warrant for fifty dollars, "as he did not want to bother with locating the land;" that the warrant was assigned to the respondent Harney, who "forwarded the same to Florida;" that the respondents obtained two hundred and forty dollars for the warrant, and it was afterwards sold to one Conoly, of Agnes, Florida, by one Battle, of Perry, Florida, for six dollars and fifty cents per acre, or two hundred and sixty dollars. The statement in the report (p. 118), that the respondent Harney forwarded the warrant to Florida, is disproved by the report itself, which shows (pp. 114, 115) that it was sold by the respondents to Harvey Spalding & Sons, of Washington, D. C., and that neither of the respondents had anything to

do with its going to Florida; and the statement of the report (p. 115), that the respondents "procured the assignment of the warrant in advance of its issue" is also erroneous, the fact being that they entered into an agreement to that effect, but did not procure the assignment until after the issue of the warrant.

The evidence submitted in behalf of the respondents (Exhibit Refundment and receipt), shows that they made restitution in this as in other cases.

Case No. 36—HEIRS OF THOMAS PYGALL.

The allegations of the citation in this case are as follows:

1. That on December 16, 1904, the respondents wrote a letter to John S. Pygall, offering to try the case if the surviving heirs-at-law of the original warrantee would sell them a duplicate of the warrant for one hundred dollars cash, and that they would make no charge for their services in prosecuting the case, and would pay for
125 the necessary advertisements, well knowing that, if the duplicate warrant had been issued, they could have sold the same for not less than four hundred and eighty dollars;

2. That in said letter the respondents made no statement whatever as to the actual value of said warrant, but, on the contrary, thereby attempted to enter into a champertous and illegal contract to pay the expenses incident to the prosecution of the claim and to absorb over three-fourths of the value of the warrant, if issued; and,

3. That any written or oral contract which the respondents may have entered into to that end is wholly void and in violation of the provisions of section 2436, R. S. U. S.

The statements of the answer are as follows:

1. For reasons twice in the answer theretofore referred to, it was not possible for the respondents to know, and they did not know, at the date of their letter of December 16, 1904, what would be the value of the warrant when to be issued.

2. It is true that the respondents did not in the said letter inform the claimant as to the actual value of the warrant, but it is equally true that they did not at the time know that value. They did not profess to fix any value on the warrant, unless their offer to purchase it at a set price may be construed as such attempt, and they did not profess to give any assurance as to its value, nor did they, by anything contained in the letter, endeavor to mislead the claimants as to any sources of information accessible as to the value of the warrant, or to say anything inviting the claimants to rely upon the offer to the exclusion of any inquiry or inquiries which they might see fit, and which it was entirely within their power, to make in the premises.

As respects the allegation that the respondents attempted to enter into a champertous and illegal contract in the premises, they do not admit that their letter is justly capable of any such construction. They were not undertaking to induce the claimants to *divide* the produce or fruits of their services, which is essential to champerty, but they frankly admit that they were endeavoring to buy in advance the subject of claim, and this, they submit, they might law-

fully do against the whole world, except the claimants, whose privilege it was in the end to refuse to carry the bargain into
126 effect. This consideration is involved in the third allegation, to which they pass.

3. That any written or oral contract which the respondents may have entered into in the premises may have been void under section 2436, R. S. U. S., may be admitted, but that it was *in violation* of that section is respectfully denied, for the reason that that section does not *forbid* such agreements: it only makes them *void*; and it has been so frequently adjudged that the invalidity of such and similar agreements is available only to the claimant, who may or may not insist upon such invalidity, that it seems necessary only to add that, as all persons are equally presumed to know the law, the claimants must be presumed to have known that at the end of the respondents' labors and the rendition of their services in the premises, it remained for the claimants, and them only, to recognize or to repudiate any supposed obligation on their part in the premises.

As the Bureau must know, the facts in this case were most complicated and the services to be rendered involved many and great difficulties. Under date of December 5, 1906, Pygall wrote the respondents that he had received the duplicate land warrant from the Department, and offered to send the same to them for the agreed price of one hundred dollars. On receipt of his letter, the respondents called at the Pension Bureau and learned for the first time that on October 10, 1906, order 85 had been issued, in accordance with which bounty-land warrants would be no longer delivered to any one except the claimants, and they also learned at the same time that the Bureau did not look with favor upon the practice of attorneys buying warrants from their clients or entering into agreements to buy warrants afterwards to be issued. The respondents thereupon, on December 12, 1906, wrote and sent Pygall the following letter:

"We have your favor of the 5th instant, informing us that you have received from the Pension Bureau the duplicate bounty-land warrant which you made application for through us. You also say that you are now willing to carry out your agreement to sell it to us.

"In reply we would say that when we entered into the agreement to purchase the warrant from you for a cash consideration we believed, and still believe, that we had, and that you had, a perfect right to do so, but we have recently learned that the Pension Bureau does not look with favor on transactions of the like, and under the circumstances we have concluded to ask that you make such disposition of the warrant as you see fit, and that you pay us our fee of ten dollars for having secured it for you."

In fact, the respondents did not receive the warrant, and ever since writing the said letter they have lived up to the principle therein expressed and have wholly abandoned the field of dealing in land warrants. Had the agreement been carried out, however, the claimant would have been greatly benefited, by reason of the fact that on January 31, 1907, the Secretary of the Interior, in the case of Lawrence W. Simpson, overruled the decision of February 5, 1902, in the case of Charles P. Maginnis, as to the location of land warrants,

thereby making it difficult for any warrantee to dispose of his warrant at even seventy-five cents per acre. The offer, therefore, contained in the respondents' letter of December 16, 1904, for the warrant when issued proved to be more than a fair offer for the warrant, and is an apt illustration of the precarious value of such warrants, herein several times referred to.

The material statements of the report are to the effect following:

That the application was for a duplicate of a warrant formerly issued; that the claimants themselves brought the matter to the attention of the respondents, stating the facts with reference to the loss of the original warrant and asking whether it could be reissued; that respondents replied, asking if the claimants were willing that they, the respondents, should do all the work and pay all the expenses and then buy the warrant for one hundred dollars, if reissued, and, if not reissued, the claimants to pay nothing and the firm to receive nothing; that the claimants agreed accordingly; that the duplicate warrant was issued and sent directly to one of the heirs, "having been issued after the order prohibiting the delivery of warrants to attorneys had been promulgated," and that (p. 129), "this is the only case in which Milo B. Stevens & Co. were charged with champerty, and the charge is based on their own showing on the letter copied above."

128 The report omits to state that prior to the issue of the warrant the respondents, by their letter of December 12, 1906 (answer, p. 12, and Exhibit Pygall), receded from their agreement to take the warrant, because of the recently learned attitude of the Pension Bureau, and to this extent the report is uncandid.

The persistence in the report of the allegation that the agreement in this case was champertous is difficult of understanding upon any hypothesis other than the desire to magnify and to make as offensive in appearance as possible the charges against the respondents. As pointed out in the answer, the agreement did not involve champerty, the essence of which, as the word itself implies and as its legal definition imports, is "a bargain with a plaintiff or defendant, *campum partire*, to divide the land or other matter sued for between them if they prevail at law, whereupon the champertor is to carry on the party's suit at his own expense" (4 Black. Com., 135), and "the gist of the offense is that the intermeddling is unlawful, that it is officious, and in a suit which in no way belongs to the intermeddler" (5 Am. Eng. Ency. of Law, 2d ed., 819). In this case there was no such intermeddling; it was a case placed in the hands of attorneys, whose relation, therefore, to the case could in no sense be officious; it was a case in which there was no agreement to *divide* the fruits or proceeds of the application, but in which the attorneys in effect agreed to take an assignment of the subject-matter of litigation, which at this day and date is, under proper conditions, entirely permissible. The rule of the common law as to champerty rested in the doctrine that rights of action could not be assigned, a doctrine long since exploded; and, as said of the doctrine in *Hicox vs. Elliott*, 10 Sawy. (U. S.), 429, "the evident modern drift of both the English and American courts is in the contrary direction; and the old doc-

trine of maintenance, which includes champerty, is treated
 129 as something belonging to the past and not suited to the
 circumstances of this age." The zeal of the Bureau in setting
 up and persisting in this charger of champerty is in inverse propor-
 tion to the proper conception of fair dealing which should actuate
 officials toward persons their relations to whom are such as those of
 the Bureau officials to the respondents in this case.

CASE NO 37—META G. THORNTON.

The allegations of the citation in this case are as follows:

1. That on February 18, 1904, the respondents filed an applica-
 tion and fee contracts in this case, and on May 12, 1904, during the
 pendency of the claim, wrote a letter to the claimant that she could
 probably get as much as \$1.25 per acre for the warrant, whereas
 when they wrote the said letter they well knew that if they then had
 the warrant they could have sold the same for not less than three
 dollars per acre;

2. That the claim was rejected May 27, 1904; that the respondents
 appealed from the action of the Bureau in the premises, and there-
 after, on April 5, 1905, filed in the Department of the Interior a
 motion for reconsideration, in the form of a printed brief, consist-
 ing of sixteen pages and one cover, which brief was not printed
 by reason of any practice, rule, or requirement of the Department,
 was not printed in the interest of the claimant, but was printed
 for the purpose of exploiting the business of the respondents; and

3. That on April 25, 1905, the respondents wrote another letter
 to the claimant, stating that the printer's bill was about equal to the
 fee that the claimant contracted to pay them, whereas the customary
 price for a single brief of the character of that submitted was one
 dollar per page and two dollars per cover, so that, at the highest
 price for printing the same, the expense thereof would not have ex-
 ceeded the sum of eighteen dollars, and that the only other printed
 matter filed by the respondents in connection with the claim was
 one declaration and two forms for affidavits and two forms for fee
 agreements; wherefore their statement to the effect that the printer's
 bill alone was about equal to the fee that the claimant contracted to
 pay them was and is false and misleading.

130 The statements of the answer are as follows:

1. It is true that the respondents filed the application and fee
 contracts and wrote the letter of May 12, 1904, as alleged, but it is
 not true that when they wrote the said letter they well knew that
 if they then had the warrant they could have sold the same for not
 less than three dollars per acre; and not only was no warrant ever
 issued in the case, but also, if they had had the warrant at the date
 of the said letter, they could not have sold the same for "not less
 than three dollars per acre," and accordingly could not have known
 that they could have sold the same for that price. As matter of fact,
 they had at that time several warrants for sale, some of which
 they had had for several months, and could not obtain a purchaser
 therefor, although they were offered for sale to various brokers in this
 city. There was at the time no demand or market for the warrants,

and the respondents could not then get any one even to make an offer for them. Notwithstanding this situation, and notwithstanding the precarious value of such warrants, for the reasons hereinafter appearing, the respondents offered the claimant two hundred dollars cash for the warrant, leaving the matter of acceptance of the offer entirely to her, and they did not at the time know and do not now know of any sale, actual or expected, of any such warrant at the price of three dollars per acre; wherefore the charge that they knew that if they then had the warrant they could have sold the same for not less than three dollars per acre is unfounded.

2. The respondents concede that it is not and never has been, so far as they know, the practice of the Department of the Interior to require printed briefs to be furnished in appeals from the action of the Pension Bureau. They deny, however, that the brief in question was not printed in the interest of the claimant, but was printed for the purpose of exploiting their business; on the contrary, they caused the brief to be printed in order to gain the particular attention of the Department to the case itself, which had already been twice rejected on appeal, and the question involved therein being far-reaching in its effects.

The necessity for the brief and the cause of its being printed and submitted appear from the following facts: May 27, 1904, the claim was rejected by the Bureau upon specific grounds stated, referring to the acts of March 3, 1855, and February 11, 1847. June 131 11, 1904, an appeal was filed on the contention that the rejection of the claim, for the reasons stated, was an error of law. December 19, 1904, the Secretary rendered a decision upholding the action of the Bureau, as it respected the act of February 11, 1847, and substituting an entirely new and different ground for refusing the warrant, under the act of March 3, 1855. December 31, 1904, a motion for reconsideration was filed, claiming error of law in the Secretary's holding as to the act of March 3, 1855, which motion was overruled January 25, 1905. The decision overruling this motion covers eight typewritten pages. As the respondents had thus encountered two adverse decisions of the Department, namely, on December 19, 1904, and on January 25, 1905, they conceived that it would be difficult, if not impossible, to have another motion for reconsideration, based on identical grounds, favorably entertained, unless they should personally appear before the Board of Pension Appeals and present the matter orally, with a volunteer promise that they would file a printed brief if the Department would consent to allow still another hearing. This they did, and that was the sole reason for filing the printed brief. To the preparation of this brief they devoted earnest labor throughout several weeks, and finally filed the brief on April 5, 1905. And they aver the fact to be that the brief was occasioned and demanded by the situation of this case itself, and was filed therein for the purpose, if possible, of obtaining a favorable decision. On the strength of the argument advanced in the brief, the Department, on May 31, 1905, overruled its two former decisions in the case, rejecting the claim, however, on other grounds, so that no warrant was issued. Incidentally and as part of its decision the Department, at the same time, overruled

the decision in the Kerran case, whereby the double result was accomplished of making it possible for widows of Mexican War soldiers to obtain bounty-land warrants where the soldiers had died after the act of March 3, 1855, and of condoning the carelessness or oversight, whichever it was, of the practice of the Bureau, extending over a period of more than ten years, of allowing this class of cases contrary to law, as laid down in the Kerran case. [7 P. D., 443.]

That the respondents afterwards used their brief in the Thornton case in connection with other cases is no more evidence that they prepared it for the exploitation of their business than would
 132 the fact of any attorney-at-law's using a brief in a given case in cases subsequently coming to his hands be evidence that he had prepared the brief in the first instance as a mere advertisement.

3. The statement that the printer's bill for the brief in question was about equal to the fee that the claimant contracted to pay was made in the honest belief that it was true. At the date of the respondents' letter of April 25, 1905, they had not received the bill and believed it might amount to as much as twenty dollars. As the fee contracted to be paid was twenty-five dollars and their statement was that the bill was "*about* equal to the fee," it is respectfully submitted that any allegation that their conduct in this particular was improper, unprofessional, or illegal is without justification.

The material statements of the report are to the following effect:

That the respondents undertook the claim under a fee agreement of twenty-five dollars, and afterwards wrote the claimant that they thought they could sell the warrant for two hundred dollars, and wanted to know whether the claimant would take that amount for it; that claimant accepted the proposition, and that the respondents gave her no other information as to the value of the warrant than that she might get two hundred dollars for it; that the respondents later wrote that they thought the claimant ought to sell the warrant to them for considerably less, but claimant did not agree; that when the claim was rejected the claimant dropped the matter, but the respondents sent her some papers, including a pamphlet like one shown her on her examination, showing that they had appealed the case, which pamphlet the respondents said took so much money to get up, being at least the amount of their legal fee, and that the pamphlet, being a brief of the respondents, a local printing company "reports" would have cost eighteen dollars.

The report concludes (p. 136), in this case:

"The charge is an attempt to receive other compensation than that provided by the act of July 4, 1884, for their services in the prosecution of the claim, and a demand for a greater compensation
 133 in an irregular and improper way, and a false statement with reference to the cost of the printer's bill used in connection with the case."

This is not true, as a reference to the citation shows.

The citation contains in effect two charges, as follows (p. 2):

"Your statement . . . that your client could probably get as much as \$1.25 per acre for the warrant was misleading, and it

is charged that when you wrote this letter you well knew that, if you then had the warrant, you could have sold the same for not less than three dollars per acre," in support of which there is not the slightest evidence, and (p. 4) "the statement contained in your letter of April 25, 1905, . . . to the effect that the printer's bill alone is about equal to the fee that your client contracted to pay you was and is false and misleading."

In view of the record, this latter charge cannot justly be characterized as other than petty and beneath the dignity of the Bureau making it.

The report in this case unwittingly gives another indication of the spirit in which the prosecution of the respondents has been conducted. In the statement attributed to the claimant during the investigation, the following occurs (p. 133):

"That witness has searched for her correspondence and has found three of the letters from Milo B. Stevens & Co. relative to this claim and the sale of the warrant, which covers the matter pretty well; that Milo B. Stevens & Co., have never written to her relative to those letters, *nor have they requested that they be destroyed.*"

The insinuation that the respondents had so been guilty, and the effort to establish that fact by the interrogation by an official of the Bureau on an *ex parte* examination, may be left to bear their own comment.

134

CASE NO. 29--MARY E. EATON.

The allegations of the citation in this case are as follows:

1. That on April 11, 1905, the respondents wrote to Henry Hollyday, Esquire, their correspondent in connection with the case, notifying him of the sending of a printed copy of their brief in the Thornton case, and forwarded the same, thereby applying the brief to the exact purpose to which they originally intended it; and
2. That in their said letter of April 11, 1905, they made misleading and false statements with reference to the cost of that brief.

The statements of the answer are as follows:

1. It is true that the respondents forwarded Mr. Hollyday a copy of their brief in the Thornton case; it is not true that in so doing they applied the brief to the purpose for which they originally intended it. They have above (in the Thornton case), truthfully and candidly stated the reason for which they intended the brief, which was to overcome the adverse rulings in the Thornton case, the case in which it was filed; and they resent the charge, which they respectfully protest is both unwarranted and unworthy of the Bureau, that they prepared the brief for any other purpose. Having in the course of preparation of the brief fully informed themselves as to the questions covered by it, and having put into the brief the fruits of their researches and labors, it was, they respectfully insist, entirely within the proprieties, and according to the practice of the most honorable attorneys, to utilize the same in any other cases in their hands to which it might be applied.

2. As heretofore stated, they had not on April 25, 1905, received the printer's bill for the brief in question and did not then know

what its amount would be; accordingly they were in equal ignorance at the date of their letter to Mr. Hollyday, namely, April 11, 1905. As respects allegation that their statement to Mr. Hollyday as to the cost of the brief was false and misleading, they repeat what is hereinbefore said in connection with the Thornton case.

The statements of the report in this case relate almost entirely to matter outside of the specific charge, which in effect is that
 135 the respondents had prepared the brief in the Thornton case for the purpose of exploiting their business and for general improper use in misrepresenting the case of that brief. Inasmuch as it is at no time pretended that the respondents sought to recover from Mrs. Eaton, or to be allowed by her, anything on account of the cost of the brief, the charge thus made is unintelligible, and can be attributed only to a desire on the part of the Bureau to seek to blacken the character of the respondents; besides which, as the answer abundantly shows, the use of this brief was entirely natural and free from the slightest appearance of impropriety.

The charge in this case was undoubtedly purposely limited to this unimportant feature; for, as the report shows, the sale of the warrant by the claimant at the price received by her was advised by Colonel Hollyday, who notwithstanding that during part of the time of the pendency of the matter he was the correspondent of the respondents, was the claimant's confidential friend, and, according to her, an honest man and knew more about the matter than she did. Colonel Hollyday explained the contents of each paper to the claimant and explained each step as they went along (p. 61). He made inquiry about the value of such warrants, and advised the claimant that he had been informed that they were worth, from \$2.50 to \$4.00 per acre, and it was on his advice that, as it was apparent that no dealing could be had with those with whom he had corresponded, and two hundred dollars was better than nothing, the claimant accepted that sum. It thus appears that the claimant did not act without counsel or without the fullest opportunity to inform herself as to the value of the warrant with which she was parting, and that throughout she acted in full knowledge of the situation and upon the advice of her friend and not upon that of the respondents. The effort to magnify this case against the respondents, and the wholly futile attempt to make it appear that the respondents
 136 sold the warrant to the person using it in making a location (pp. 58, 71, 72), speak for themselves and are indicative of the temper of the prosecution of the respondents and of the Bureau's investigation; as also is the piece of fine writing dealing with this case toward the close of the report (pp. 159, 160), speaking the tender solicitude for the financial rights of widows, so notoriously become second nature with the officials of the Pension Bureau.

Moreover, the report of the so-called testimony of the claimant in this case illustrates the manner in which *ex parte* statements are extracted from witnesses by the examiners of the Bureau. The claimant is reported as testifying thus conflictingly: "That there was some correspondence between Colonel Hollyday and Stevens & Co., and that Colonel Hollyday wrote to some friend to learn what bounty-

land warrants were worth, and advised witness that he had been informed that such warrants were worth from two dollars and a half to four dollars per acre" (pp. 60, 61); "that she sold her land warrant to Milo B. Stevens & Co., of Washington, D. C., who got the warrant for her, for the sum of two hundred dollars, because she did not know what warrants were worth" (p. 62); and "that if witness had not believed from what Stevens & Co. first said about giving her one hundred and twenty-five dollars, and then raising the offer to two hundred dollars, and that was all that witness could get, witness would not have let them had the warrant for that amount; that witness knew nothing about it and they fooled her" (p. 63).

And the claimant's confidential friend, Colonel Hollyday (who, according to the report, states that the respondents first wrote to one Anderson, who saw the claimant in the matter, but being informed that Colonel Hollyday was acting as the claimant's agent, were thereby brought into correspondence with him), is credited by the report with the following statement (p. 65): "That it is witness'

137 recollection that Stevens & Co. stated that the *land* was worth about \$1.00 per acre, and that they would give \$125 for the warrant, *and this letter was returned to them;*" and this notwithstanding that the witness adds that he replied to the respondents that he was doing what he was as the friend of the claimant. The Bureau seems not to have thought it necessary to inquire into the extraordinary statement of the claimant's friend that, of all letters purporting to have been written by the respondents in any of the cases under investigation, this so important document was returned to the respondents, and that, too, by the claimant's friends, whose duty it plainly was to have retained it, as he did the others produced by him; and upon his naked statement the respondents are condemned by the report, in the absence of opportunity to be heard.

Upon this method of extracting or establishing truth, so called, comment should be superfluous.

ADDITIONAL CASES, SO CALLED, BEING

- No. 6—CATHERINE HOGAN,
- No. 25—JOHN CLARY,
- No. 26—SALLIE GIPSON,
- No. 32—ELIZA STEVENS, and
- No. 34—JAMES BESSER.

These cases are grouped in the citation, and the allegations respecting them are that upon the issue of the warrants the respondents induced the claimants to assign the same to them upon the payment of the smallest sums for which the claimants could be induced to part therewith, and that the respondents sold the warrants to warrant dealers at the highest prices which they were able to obtain—this in violation of the provisions of sections 3 and 4 of the act of July 4, 1884, and in violation of their professional duty to the claimants.

In their answer the respondents admit that they purchased the

warrants in these cases, but aver that they did so in each instance for a sum agreed to by the claimants; and they admit that they sold the warrants at the best prices which they could obtain, but deny that in so doing they violated any of the provisions of sections 3 and 4 of the act of July 4, 1884.

And respecting these sections the answer submits that they prohibit only the demanding or receiving of compensation for *services in procuring* land warrants otherwise than in accordance with the provisions of the sections, and that in no instance did the respondents demand or receive any compensation for their services in excess of that fixed by law. In every instance they bargained for the purchase of the warrants, and none of the claimants in these or any of the other cases could possibly have understood otherwise. They admit that their agreements were of the nature contemplated by section 2436, R. S. U. S., but, as hereinbefore stated and hereinafter more fully considered, that section does not *prohibit* such agreements, but merely renders them void to the extent and in the sense that it was the privilege of the claimants at any time to repudiate the agreements, and the respondents were powerless to enforce them against the claimants, should the latter set up their invalidity.

The report, as in almost, if not quite, all of the other cases, materially enlarges the allegations made and adds to them others, to which the respondents have not been cited, and respecting which they have not been called upon or allowed to make any showing other than that made in their answer to the general allegations. On familiar principles and according to the simplest dictates of justice, the respondents might content themselves with the confidence that the Secretary of the Interior, sitting as a judge, will not consider or be affected by matter thus improperly injected into a judicial proceeding, but out of abundant caution they notice the statements of the report as hereinafter appearing.

In the Hogan case, No. 6, the substance of the report as to material matters is that the claimant made application for a warrant through the respondents and made a contract to pay them twenty-five dollars for their services; that one Kinnahan and one Johnston did the writing connected with the case; that about a month after the claimant sent in her application the respondents wrote to Johnston, offering to buy the warrant when it was issued, and Johnston sent for her to come to his office and there read her the letter of the respondents offering four hundred and fifty dollars for the warrant; that the claimant does not remember that the respondents made any statement as to the value of the warrant; that Johnston advised her that he thought the offer a very good one, and that she had better sell it for the amount offered, so she had Johnston write and say that she would do so; that she got the amount offered; that Kinnahan knew about the offer and did not, and Johnston did, want her to sell the warrant, and that Kinnahan and Johnston fell out, and the former told her that she could have got more for her warrant if she had let him (presumably, "attend to the matter for her," as there is here a blank in the report). Kinnahan states that it was after the sale of the warrant that he told the claimant that she could

have got more for it. The report sets out numerous letters from the respondents, which do not in any particular affect the case, as thus recited. The warrant was sold by the respondents for six hundred dollars, and, as the report itself (pp. 22, 23), shows, restitution was made to the claimant as in the other cases. (See also Exhibit Refundment and receipt.)

In the Clary case, No. 25, the substance of the report as to material matters is that, while the claim was pending, the respondents offered the claimant two hundred and fifteen dollars for the warrant when it should be granted, and one Russell, an attorney for the claimant, wrote two or three other parties for the claimant and got bids, but the respondents made the best bid and the warrant was sold to them for two hundred and fifteen dollars; that Russell is
140 positive there were two or more bids for the warrant, and that the respondents made the highest bid by at least fifteen dollars; and that the locator, who used the warrant, did not obtain it from the respondents, but from one Moses, to whom the respondents had sold it.

Restitution was made in this case, as in the others. (See Exhibit Refundment and receipt.)

In the Gipson case, No. 26, the substance of the report, as to material matters, is that the claimant got a notice that there was a land warrant for her, asking her what she would take for it; that her nephew said he would give her seventy dollars for it; that she agreed to take one hundred dollars for it, and did so, and that she never agreed to sell the warrant to anybody before it was granted.

Restitution was made in this case also (Report pp. 51, 52; Exhibit Refundment and receipt).

In the Stevens case, No. 32, the substance of the report, as to material matters, is that the claimant did not know anything about being entitled to a warrant until she received a letter from the respondents so informing her, whereupon she went to one Fisk, a notary public, and he made an application for her right away; that she remembers that the respondents wrote, asking what she would take for her warrant, but they did not make any offer at that time, as she understood it; that she had Fisk write the respondents that she could not put any price on the warrant, as she did not know whether she would sell it or not, and that the respondents wrote, offering to give her two hundred and fifty dollars for it; that she got another letter from the respondents, in which they offered her three hundred and twenty-five dollars for the warrant, and that the respondents made several statements as to the value of the warrant, all to the effect that it was not worth much; that she was advised not to take less than five hundred dollars for it, but she finally decided

that she would accept the offer of respondents and sold the
141 warrant for three hundred and twenty-five dollars, of which twenty-five dollars went for the attorneys' fee, so that she got three hundred dollars net for the warrant.

According to Fisk, the first offer of the respondents was for four hundred dollars; he, Fisk, wrote to some firm in Kansas City, or to some company in St. Louis, about the sale of the warrant, but they stated that when the warrant was secured they would talk about buy-

ing, or at least that was what he inferred from their responses, as they did not know where the land would be located and it might be almost worthless; that a smaller offer made by the respondents was finally accepted by the warrantee; that the respondents represented that the warrant would not be worth any more than they offered for it; that he, Fisk, knows that the claimant finally decided to accept the offer of the respondents, and himself and one Lewis advised her to do so. On this point Lewis also states that he advised the claimant to accept the amount finally offered, "as she could not handle the land;" that the warrant was sold to the respondents for the last sum offered, and they were to get nothing as her agents to sell the warrant, but acted as buyers, who were trying to obtain it as cheaply as possible.

Restitution was made in that as in the other cases (Report, p. 107; Exhibit Refundment and receipt).

In the Besser case, No. 34, the substance of the report, as to material matters, is that the respondents got a warrant for him and he sold it to them for two hundred and fifty dollars; that one Humphrey did all the writing in connection with the matter, and it was through Humphrey that the claimant made the sale; that the claimant was to pay the respondents for getting the warrant, and when they got it they offered to buy it, and not before; that Humphrey wrote the respondents that the claimant was unwilling to accept their offer for the warrant until he heard from some other parties in the Northwest,

142 with whom Humphrey was corresponding in the claimant's behalf, and that for the time being the claimant would not be willing to take less than two hundred and fifty dollars, and that in reply to this the respondents accepted the claimant's offer of two hundred and fifty dollars.

Restitution was made in this as in the other cases (Report, p. 121; Exhibit Refundment and receipt).

The perfect candor of the respondents is manifest from their letter of May 21, 1906 (Report, p. 119), in which they say as follows:

"It is rather difficult to place any definite price on a bounty-land warrant, for the reason that after purchasing a warrant you may have to hold it for months before you can find a purchaser for it. We have never made or attempted to make any use of a bounty-land warrant beyond selling it again, and hence our profit comes from the selling of the warrant by us at a higher price than we paid for it. We had an offer for a warrant a few days ago, and that is why we wired our offer of two hundred dollars for it. We are willing to allow that offer to stand, and if it is possible for us to increase it we shall be glad to do so. We think, however, that the best course for us to pursue is to have you take up the matter with Mr. Besser, and then have him make us an offer. If we can handle the warrant at the price named by him and make any profit out of the transaction, we shall be glad to purchase it."

III.

Value of Warrants and Duty of Respondents as to Disclosing.

Both the citation to the respondents and the report of the Commissioner show that he considers the supposed value of the warrants

in question to be of prime importance in considering the charges preferred, and upon this subject he states in his report as follows (pp. 1, 2):

143 "Such warrants could only be located upon certain offered lands in the State of Missouri, and they were worth from \$1.00 to \$1.25 per acre up to February 5, 1902, when, in departmental decision in the case of Maginnis (31 L. D., 222), it was held that such warrants could be located upon any lands of the United States subject to private entry. The effect of this decision was to immediately enhance the market value of such warrants, and in 1904-'05 dealers purchased 160-acre warrants for \$4.00 per acre; 120-acre warrants at \$4.50 per acre; 80-acre warrants at \$4.75 per acre, and 40-acre warrants at \$5.00 per acre, and in some instances higher prices were paid.

"This increase in the value of warrants stimulated the filing of applications in this Bureau and excited the greed of certain attorneys engaged in the prosecution of such claims, leading them to resort to improper, unprofessional and illegal conduct, to the end that they might obtain greater profits from their business than was provided by law."

In their answer the respondents make upon this point this accurate and incontrovertible statement (pp. 21, 22):

"By reason of the fact that the value of such warrants for location was dependent upon the Department's decision in the Maginnis case, and of our knowledge and that of the agents and attorneys in general dealing in such matters that the decision might at any time be modified or overruled, we were fully aware that anything approaching certainty in the value of the warrants was problematical and temporary; and by reason of the further fact that in undertaking to dispose of the warrants to third persons we would be, and were, obliged to assume all the risks hereinbefore mentioned, we considered the warrants as of precarious value, as in fact they were; and our contemplation of the fate of the Maginnis decision was realized in the decision in the Simpson case, limiting the location of the warrants to what it was before the Maginnis decision, before which time even, as above stated, we had at times on our hands warrants of which we could not dispose and for which we had not even offers. All of these facts, well known to us, made our dealing in the warrants a manifest venture."

And of what is here said the history of the Pygall case is an apt confirmation. On December 16, 1904, the respondents offered to take the warrant at 100 cash, exclusive of all charges and expenses. Under date of December 5, 1906, one of the heirs, acting for all, wrote the respondents that he had received the warrant and offered to send the same to the respondents for the agreed price. One week thereafter, namely, on December 12, 1906, respondents wrote, declining to take the warrant because of the ascertained view of the Bureau looking with disfavor on such transactions, and on January 31, 1907, the decision in the Simpson case, restoring such warrants to their former restricted value, was made. Wherefore, had the transaction as originally begun been consummated, the respondents would have realized the very contingency

which they had, and of right had, in consideration and contemplation in every one of the cases under inquiry.

1. On this question of value the report states as follows (p. 125):

"The evidence shows that the price of warrants did not materially decrease at any time from October, 1903, to January, 1907, and was never less than three dollars per acre during said period."

To the contrary, the evidence submitted for the respondents—and none in conflict with it has been brought to their notice—shows that from June, 1903, to January, 1905, there was a great depression in the scrip market; that during that period one dealer was carrying more than eight thousand acres of land rights, of which about five thousand acres were in military bounty-land warrants and Surveyor General scrip, practically of the same class; that during the said period of more than nineteen months there was practically no demand for land rights of any kind, and not enough sales were made to pay interest on the money invested; that business was so dull during the months of April, May, and June, 1904, that the dealer referred to made no sales whatever, and, as he was heavily loaded with scrip

and warrants at that time, did not care to add to his stock; 145 that during the said three months last mentioned the respondents on several occasions desired and offered to sell the said dealer some military bounty-land warrants, but he refused to make them any offer which would receive any consideration whatever; that it would be expressive to say that land rights of all kinds at that time were a drug on the market, and there was no price which could be easily obtained, and any one purchasing would be apparently taking the greatest kind of a speculative risk in so doing; and not only was there no market for the scrip, but also the same was not available for borrowing purposes, owing to the uncertainty whether the Department would not reverse its decision in the Maginnis case and thereby make the warrants worth considerably less than one dollar per acre. (Affidavit of Homer Guerry.)

The same evidence further shows that on January 1, 1904, another dealer had on hand, unsold, 1,760 acres of military bounty-land warrants, none of which did he sell during the entire year of 1904, for the reason that throughout that year there was little or no market for them, and he was compelled to hold them until the year 1905 before he was able to dispose of them. (Affidavit of Henry N. Copp.)

And the evidence further shows that on May 12, 1904, the respondents had on hand, unsold, six bounty-land warrants purchased at various dates from February 4 to May 11, 1904; that the said warrants so remained in possession of the respondents, unsold, because a purchaser therefor could not be obtained, and the respondents could not and did not find a purchaser for said warrants until July 26, 1904, when they were sold to a scrip dealer at less than \$3.00, or, to be exact, \$2.91 per acre; and that between April and July, 1904, the respondents made repeated efforts to dispose of said warrants, but were unable to get even an offer for them, the scrip market being so dull. (Affidavits of Emily F. Camp and Frank D. Fawcett.)

As against this uncontroverted and incontrovertible showing, stress

146 is laid by the report (p. 137), upon the fact that the warrant in the Bacot case was sold by the respondent Harney on October 4, 1904, for the sum of \$510, and it is said (pp. 149, 150) that it is as certain, from the testimony adduced, as anything can be certain that the respondents well knew within a few cents the market value of each of the warrants of their clients which they caused to be assigned to them. How such a statement as the latter could be made, in the light of the record, upon any fair consideration thereof, is incomprehensible, as also is the justification of any inference from the fact of an isolated sale on a given day that such sale establishes a general market value: seeing that the circumstances, needs, and opportunities of a purchaser of such scrip may well be, and as a rule are, in every case controlling and peculiar to the particular case, and therefore no foundation for any conclusion as to general market value and no basis for the support of any supposed rule as to price. To the contrary, the evidence at every point fully sustains the contention of the respondents, made in their answer, that the circumstances surrounding dealings in the warrants in question made them in the highest sense of uncertain and precarious value, and any dealing in them a manifest venture.

Nor is it at all fair to estimate the value of the warrants to the warrantees by any price which may have been obtained for them from persons actually needing them for use in making locations. In order to make the value paid by locators a fair test of value to the warrantees, it is necessary to assume, which is contrary to the fact, that such locators were either ordinarily to be found or known and accessible to the warrantees. The plain fact is that in quite every instance none of the warrants dealt in by the respondents was used in the locality of residence of the warrantee or within any reasonable distance therefrom, and it needs no argument to establish the proposition that, in order to make the warrants of the assumed value to the warrantees, the latter must themselves have been in a position to find, and to have found, purchasers—a condition not appearing in the case of any of the warrantees; as also it is an
147 equally plain fact (which by a singular perversion the report aims to turn against the respondents as matter of accusation), that throughout the respondents held themselves out, not as intending locators, but as speculative dealers, thereby putting the claimants upon notice that in fact they were getting at their own homes less than the value of the warrants for use elsewhere, and that the respondents were thereby deriving in the transactions a profit which, had it been feasible or practicable, the claimants were themselves in effect warned to seek.

2. As respects the supposed duty of the respondents to disclose to the several claimants the knowledge imputed to the respondents of the value of the warrants, the citation states as follows (p. 14):

“It was your duty to have promptly turned the warrants over to your client, and, if it was your desire to purchase the same, to have made full disclosure to each client as to all the facts concerning the value of his warrant which might influence him in determining the question of sale. You failed to so deliver any warrant, and failed to make any disclosure whatever as to the value thereof, but, on

the contrary, induced each of said clients to assign to you the warrant you had secured to be issued, by offering an inadequate price therefor and by concealing from your client the market value of his warrant."

And to this point the report states as follows (p. 144) :

"That it was the duty of the accused to have advised their said clients of all the facts which would have assisted said clients in determining the propriety of the sale of the warrants for the amounts offered: that they failed to so advise their clients, and by concealment, misrepresentations, and false statements caused the warrants to be assigned to them at a fraction of their real value, and thereafter sold said warrants at the market price."

The answer of the respondents, after reciting what is above set forth as to the precarious value of the warrants, states as follows (pp. 22, 23) :

148 "Had any of our clients, before agreeing to deal with us in respect of assigning the warrants, made inquiry of us, all of the foregoing facts would have been communicated to such, with the probable, if not inevitable, result of inducing a willingness on the part of the applicants, in many instances, to dispose of their warrants for even less than the sums for which they agreed to sell them. * * * For the reasons appearing, it was impossible to disclose to any client the value of his warrant, further than to quote the latest price of which we knew, and in so doing justice to ourselves would have required the communication at the same time of the foregoing considerations, at the risk of appearing to attempt to mislead the client and to beat him down in his price, which would have put us in a situation more awkward, in our judgment, than the one we are now facing. This, at the same time answers the charge that it was our duty to make full disclosure to each client as to all the facts concerning the value of his warrant which might influence him in determining the question of sale, for the obvious reason that so to have done would have rendered us subject to the imputation indicated; and whether the substitution by any attorney of his position as such by the position of a bargainer for the subject of controversy requires the attorney to undertake to lay before his client all the facts which he thinks pertinent, at the imminent risk of unintentionally omitting what to others might seem pertinent, and thereby bringing himself under reprobation, is among the nicest questions in professional dealings and ethics, and one which no attorney with any regard for either the appearances or consequences would be wise in assuming. The other question, how far an applicant approached by his attorney as a possible vendor of the subject of employment is subject to the rule that every intending vendor and every intending purchaser are expected and assumed to deal with one another at arm's length, is another nice question, the discussion of which we do not think necessary in the premises."

Notwithstanding such, the unassailable position of the answer, and notwithstanding that neither in the citation nor in the report is any authority cited for the proposition that it is the duty of an attorney dealing with his client respecting the subject-matter of

149 employment to make full disclosure to the client of all that the attorney may know or surmise as to the value of that subject-matter, or the duty of the attorney to inform his client of all the facts which would assist the latter in determining the propriety of the sale of the subject-matter for an amount offered or under consideration, it is now here submitted for the respondents that there is no such rule as to the duty of an attorney in the premises. The rule of the law, as to both the rights and the ethics of the matter, goes no further than this: An attorney is under no incapacity to deal with or purchase from his client; all that can be required is that there shall be no abuse of the confidence reposed in him, no imposition or undue influence practiced, nor any unconscionable advantage taken by him of his client. In a transaction of this character, when attacked by the client, the burden is upon the attorney to show its perfect fairness; but if the court is satisfied that the client performed the act or entered into the transaction voluntarily, deliberately, and advisedly, knowing its nature and effect, and that no concealment or undue means were used to secure his consent to what was done, the transaction will be upheld; and to entitle the client to relief it must be shown that the client has suffered some injury through an abuse of confidence on the part of his attorney. To show merely that the relation of client and attorney existed, and that during the subsistence of the relation the parties entered into a contract, without showing that the client was induced thereto by an abuse of confidence by the attorney, is not enough. The attorney is under obligation to disclose to the client all the information which he may receive through and in the course of his employment, but this obligation is confined to information respecting the subject-matter of the employment and acquired in the course of managing the client's interests in respect thereof; information of a general nature, and collateral to the subject-matter and the object of the employment, is not within the rule; and an attorney who does not communicate to his client knowledge of
150 general matters not acquired through and in the course of the employment, and who at the same time does not mislead the client in respect of any matter, and who does not put in the client's way any impediment to acquiring the same information, and who does or says nothing to lead the client into a wrong channel of inquiry, or to divert him from a like right line, is wholly free of any imputation of abuse of confidence, imposition, undue influence, or improper advantage.

This states the rule against attorneys as strongly as possible, and more strongly than it has been stated in any adjudged case. And assuming the rule, thus stated, to apply to practitioners before the Bureau of Pensions—which is denied, as hereinafter appearing—the record wholly fails to show any act, whether of omission or commission, by the respondents in disregard of either its letter or its spirit.

IV.

Animus and Unfairness of the Report.

An examination of the report in the light of the entire record manifests to a most regrettable extent the gross unfairness of the Commissioner's report, and of the animus of the officials of the Bureau concerned in it. That this stricture is not unjustified, but is indeed compelled, is evident from the following considerations:

1. Many of the most material and serious allegations of fact in the report are wholly without support.

The unwarranted assertion that the evidence shows that from October, 1903, to January, 1907, there was no material decrease in the price of warrants, and that they were never during that time worth less than three dollars per acre has already been met. The charges that the respondents made any misrepresentations, misstatements, or concealments in regard to the value of the warrants either
 151 have no other support than the unjustifiable inference that because the respondents stated only certain things they were thereby guilty of concealment of others, or else rest upon *ex parte* statements of a character such that no self-respecting tribunal should be called upon to give them heed. The latter suggestion is considered more fully hereinafter in connection with the character of the testimony, so called, set forth and relied upon in the report.

As respects the former, the challenge is confidently made to find anywhere in the record, outside of the statements just characterized, any evidence of any misrepresentation, misstatement, or concealment by the respondents or either of them in respect of the value of any warrant in question; for it is one thing to state truthfully the considerations calculated to affect the value of a given thing and quite another to state as a concrete fact that thing has only a given value. This has been already considered hereinbefore in connection with the supposed duty of the respondents to disclose to the claimants all the circumstances possibly bearing upon the value of a warrant in any given case. It is to be added that the record shows that in every case, with the possible exception of the Pygall and Thornton cases, the claimant, to the knowledge of the respondents, had opportunity to have, and indeed had, the benefit of the assistance and counsel of a person or persons at the home of the claimant. Thus, in the Hogan case, the claimant was advised and assisted by Messrs. Kinnahan and Johnston, the latter of whose statement (pp. 13, 14), shows that he and his father were in the business of dealing in warrants; in the Graves case she had at hand her son-in-law and daughter, professing to be fully cognizant of all the details of the transaction; in the Shirkey case she had an attorney, one Pool; in the Clarky case he had one Russell, an attorney; in the Gipson case she had her nephew and one Smith; in the Monaghan case she had
 152 the local postmaster, Gillette; in the Eaton case she had her confidential friend, Hollyday, who was a friend of her family for two generations before hers; in the Hickman case she had her son, daughter, daughter-in-law, and grand-daughter; in the Reddick case she had her nephew, to whom her warrant was sent

and before whom she executed it; in the Stevens case she had the notary public, Fisk, and Lewis; in the McKean case he had his daughter and Tegener; and in the Besser case he had Humphrey, an attorney.

Notwithstanding all this, the report industriously aims to make it appear that the claimant was in each instance imposed upon by the respondents, without the aid or possibility of aid of personal and friendly assistants and advisers. This is abundantly clear, as well from the citation as from the report. Thus, in the Eaton case (p. 4), the respondents are charged with having "secured" Hollyday to act as their correspondent, when the evidence is plain that he was brought into the matter by the claimant herself, over the head of one Anderson, to whom the respondents had written. In the Hickman case they are charged with having "caused" the claimant to agree to sell the warrant for seventy-five dollars, when the evidence (Letter of April 8, 1905; Citation, p. 8; Report, p. 72) shows the surprise of the respondents at receiving the offer of seventy-five dollars. In the Monaghan case (Citation, p. 12) they are charged with having "induced" the claimant to accept the amount paid, when the fact is that the whole question was fully considered by Gillette, on whose advice the claimant acted. In the Reddick case they are charged (Citation, p. 13) with having "induced" the claimant to assign her warrant, when the evidence shows that there was not so much as a dicker in the transaction; and in the Shirkey case they are charged with having "induced" the claimant to part with the warrant (Citation, p. 14), when in fact she was intelligently represented by the local attorney mentioned, who was looking after her interests. It seems in these, as in other features of the report, that the Bureau regards innuendo as the equivalent of accusation and the application of epithets as an adequate substitute for proof.

153 2. In the effort to smirch the respondents and to make the case against them seem as black as possible, the superficially worst appearing of all cases, namely, the Hickman case, is taken as illustrative of all (Report, p. 124), and this notwithstanding that the record plainly shows that the comparatively small sum paid by the respondents for the warrant was, as above stated, not of their own naming, and the mention of it to them came as a surprise, and in the form of an offer, which they accepted.

3. The report is graced with slurring allusions to the age and financial condition of certain of the claimants, as though the respondents had taken advantage thereof in imposing upon such claimants in respect of inducing them to part with their warrants, of which there is no particle of evidence, such representations as were made in the particulars mentioned having been made to the Bureau with a view only to expedition of action on the applications. In the Cannon case (pp. 28, 29) the report says: "It will be seen that the advanced age and enfeebled condition of their client was such as to prompt Milo B. Stevens & Co. to appeal to the Commissioner of Pen- sions to make her case special, but was not sufficient to appeal to the sympathy of the members of said firm, as against their own interest," notwithstanding that the record offers no word as to the circum-

stances under which the warrant in that case was bought; and the suggestion that the age of the claimants should be taken into account in condemnation of the respondents (Report, pp. 158, 159) is gratuitous, not to say vindictive, seeing that, as already shown, all the claimants from whom the respondents procured warrants were in friendly hands at their own homes, and that there is not the slightest evidence tending to support a suggestion even that

154 the age or any other temporal condition of the claimant was in any instance taken, or sought to be taken, advantage of.

4. In the Graves case (Citation, pp. 11, 12), the insinuation, not rising to the dignity of an accusation and so not partaking of its courage, (and perhaps for that reason wholly omitted from the report), is that the respondents induced Johnston to refuse to testify before a special examiner, whereas, as shown by the evidence (affidavit of Johnston), there never was the slightest foundation for the insinuation—a fact which the Bureau, by a simple question through its examiner, might have learned in advance of the citation, and thus have saved itself from the position of aiming to put upon the respondents a wholly unwarranted stigma.

5. Another insinuation of the report, and one equally without foundation, is that the respondents had improperly obtained information in aid of their practice in purchasing warrants.

Upon this point the Commissioner's report (pp. 152, 153), states as follows:

"It was reported to me that the applications for duplicate warrants were being filed by certain attorneys, and that there were reasons for the belief that they were based upon data illegitimately obtained from some unknown source. * * * Investigations were ordered into various bounty-land cases admitted by this Bureau in various sections of the country, and the testimony obtained shows that Milo B. Stevens & Co. * * * had procured certain warrants, which they had caused to be issued in their capacity as attorneys of record before this Bureau, to be assigned to them."

In the evidence submitted in behalf of the respondents it is set forth (p. 10):

"That under whatever criticism other attorneys may properly rest in the particulars indicated, it cannot properly be charged upon Messrs. Stevens & Co. either that they obtained through the

155 Land Office the names of the clients for whom they acted, or that they were the beneficiaries of any 'leak' in that or any other office."

The Exhibit "Bounty Land Cases," showing the source to the respondents of every case prosecuted by them, establishes this beyond all doubt, even without the aid of the affidavits bearing upon the point.

And the affidavit of Fawcett, chief clerk of the respondents at their Washington office (p. 6), is thus specific:

"I can state positively that the firm did not examine the records of the Land Office, nor did it cause the same to be examined for the purpose of finding out who had secured bounty-land warrants that had not been located, and then seek to find the warrantees or their

heirs. No such thing was done, and it could not have been done without my knowledge, because, as before stated, all of this bounty-land work came under my personal supervision and was for the most part attended to by me, and I was familiar with all the bounty-land business secured and transacted by the firm."

In the light of this showing, the insinuation, which was not made in the citation and appears for the first time in the report, might well have been omitted.

6. Except for its illustration of the tone and temper of the report, what is therein said about the personnel of the firm of the respondents would be ignored. The attempt to revive matters so obviously belonging to the past, one of which affects neither of the respondents and another affects but one of them, at the time a lad of seventeen; which were dismissed by the Bureau and the Department respectively; and which are unmentioned in the citation, need not be characterized, as no respectable intelligence can possibly be affected by methods of which such a course is indicative; but the following ought to be rescued from the mass of the report as a fit example for future workers along similar lines:

"As shown by the testimony briefed above, Martha G. Stevens, the widow of Milo B. Stevens, on April 10, 1897, 156 received and receipted for the sum of \$13,976.19 for her share of the partnership of the deceased husband in the firm of Milo B. Stevens & Co., and on the same day received and receipted for the sum of \$13,976.20 for the share of her daughter and ward, Evelyn Stevens. There is no evidence before this Bureau that, subsequent to April 10, 1897, Mrs. Martha G. Stevens or Miss Evelyn Stevens acquired an interest in the firm and, as shown by the records of the probate court at Cleveland, Ohio, Martha G. Stevens ceased to be the widow of Milo B. Stevens on October 19, 1898, when she became the wife of Thomas R. Harney."

"It would have been better and would have tended to inspire faith in the answer of Messrs. Stevens & Co. if they had frankly stated these facts, and it is in keeping with the representations which they are shown to have made to their clients in these bounty-land cases that they should have attempted to conceal from this Bureau that the widow of Milo B. Stevens became the wife of Thomas R. Harney on October 19, 1898, and was not in existence as Mrs. Stevens when they filed their response" (pp. 157-8).

It may suffice to say that this situation was perfectly well known to the Bureau, through various of its officers, at the time the report was filed and for a long time prior thereto; and had the Bureau desired to learn the truth it would upon the simplest inquiry have ascertained that the settlement of the estate of Milo B. Stevens in the probate court was a mere formality, and that the interests of his widow and minor child in the firm have been continued by subsequent arrangement, and are in fact and in law the same as though she had not subsequently married the respondent Harney.

Ever since the death of Milo B. Stevens, on November 23, 1896, the firm's letter-head, of which many specimens are to be found copied into the Commissioner's report, has contained, and still con-

tains, the standing announcement of his estate's interest in the firm; and, moreover, the application of his minor daughter for a pension, which was allowed by Certificate No. 479,868, was, as the records of the Bureau show, made by her mother in her re-married name of

157 Harney, involving, of necessity, the proof by the latter of her re-marriage, so that this alone, and wholly without regard to the personal and social relations which have long existed between Mr. and Mrs. Harney, on the one hand, and various members of the Bureau, on the other, renders any proper characterization of the Commissioner's reference to this feature purely a matter of taste.

7. The report contains the following statement (p. 154):

"To the end that no injustice might be done them [the respondents], on May 22, 1907, a letter was written to Mr. Davis, their attorney, stating that this matter would be held in abeyance for a period of ten days to allow Messrs. Stevens and Harney to file such evidence as they may possess and they may desire to offer in support of the allegations contained in their joint response to the citation. No evidence has been filed in response to this letter, though a considerable period of grace has been allowed."

The reference to this hereinabove made (*ante*, pp. 1, 2), is for convenience here repeated:

"The citation allowed Messrs. Stevens and Harney a period of thirty days from the date of its receipt to show cause why it should not be recommended to the Secretary of the Interior that each of them be disbarred from practice before the Pension Bureau, and called for answer under oath. At the request of counsel, the time to answer was enlarged, and the answer was filed with the Commissioner on May 21, 1907. Upon receipt of the answer, counsel was notified that a period of ten days would be allowed for submission of evidence in support of the allegations of the answer, which time in turn was also verbally extended at the request of counsel, because of counsel's engagement in a case coming on for trial in the Supreme Court of the District of Columbia on June 3 and continuing until and including July 3, 1907. It was understood and believed by counsel that this latter extension was to cover the period occupied by the trial mentioned and a reasonable time thereafter. The officers of the Bureau, however, seemingly understanding otherwise, took up for consideration the citation and answer in the absence of the suggested

158 evidence, and on June 12, 1907, the Commissioner submitted to the Secretary of the Interior a report recommending an order disbarring Messrs. Stevens and Harney from further practicing before the Bureau. Notice of this action was communicated to the respondents and counsel, and upon the receipt of such notification counsel immediately called upon the Commissioner, and, after stating his understanding of the extension of time, as aforesaid, was allowed until and including the 24th day of June to submit the evidence referred to. On the last-mentioned day, namely, June 24, 1907, counsel submitted the evidence which was supposed to be called for in the form of a memorandum and various affidavits, six in number, and on the following day, namely, June 25, 1907, without any other or further report, and without any apparent consideration of

the evidence submitted, and upon his original report of June 12, 1907, unchanged in any particular, and without any reference whatever to the evidence submitted, the Commissioner of Pensions again recommended an order of disbarment."

Very plainly this evidence has not been read by the Commissioner or, if read, has been wholly ignored by him; for the report contains the following statements:

Respecting case No. 1, Mary J. Ochiltree, "there is no evidence before the Bureau as to how much was paid by Stevens & Co. for the warrant, or that restitution was made to the warrantee" (p. 78); in case No. 3, Bridget Bothwell, "the warrantee states: * * * thus indicating that Stevens & Co. paid their client two hundred dollars net for the warrant and sold the same for six hundred and ninety-four dollars" (pp. 8, 9); in case No. 16, Robert Clark, "This case has not been investigated and no response has been made to a letter from this Bureau requesting information as to the amount which the warrantee received for his warrant from Milo B. Stevens & Co. shortly after the issue of said warrant, and whether an additional payment has recently been made" (pp. 29, 30); and, in the summing up, "It would have greatly simplified the work of this Bureau if Messrs. Stevens and Harney had deemed it proper to frankly state just how much was refunded to each client, and to what clients refundments

159 were made; but they did not deem it proper to make a frank statement on this point, and hence, as the only means of ascertaining the facts at short notice, the Bureau wrote letters to clients in the cases in which the warrants were delivered to them, and also to clients who secured their own warrants," (Pp. 155, 156).

As matter of fact, the respondents submitted the showing known as "Exhibit Refundment," giving in detail, as to each case in which they bought the warrant, the name of the applicant, the number of acres, the amount paid by them, the amount for which sold by them, the amount of fee allowable to them, and the amount refunded, the same being introduced as follows:

"The following statement shows the bounty-land warrants purchased by Stevens & Co. in which they were the attorneys of record; what they paid for each warrant; what they obtained for each warrant, (making no deduction whatever for amounts paid agents and attorneys as commissions or for other expenses incurred in the prosecution of same), and the amount refunded in each case. In the column 'Fee,' the mark of interrogation is put after the amount, wherever appearing, to indicate that Stevens & Co. are in doubt whether, in the given case, a fee contract was filed. If such contract were filed, the amount properly to be deducted would be twenty-five dollars, instead of ten dollars, but in every instance the claimant has been given the benefit of the doubt and the amount to be deducted fixed at the minimum."

In such a situation the most effective comment is silence.

8. In the answer of the respondents (p. 21), the following statement is made:

"When we entered the field of procuring these warrants we found an established practice of many years' standing, as we believe, of at-

torneys dealing in warrants of their own procurement, which practice we had reason to believe, and believed, was with the full knowledge of the Bureau, and which not only was not the subject of any rule, but which also had not been made the subject of any criticism by the Bureau, according to either our knowledge or surmise.

160 Moreover, throughout our transactions in the premises we had a representative in daily contact with the Bureau, and no intimation, direct or indirect, was ever made to either such representative or ourselves of any suspicion of impropriety in the prevalent practice. As already stated, in the fall of 1906 we first learned of the discountenance by the Bureau of the practice and immediately abandoned it, as is evidenced by our action in the Pygall case, above related."

Upon this the report says:

"Their statement that their action in purchasing the warrants of their clients and selling them again was, as they believe, the general practice in such matters and was known to the officers of this Bureau is without any proof to support it, and, as far as is known to me, is absolutely and wholly without foundation in fact" (pp. 150, 151).

The evidence submitted in behalf of the respondents sets forth as follows:

"That when the firm entered the field of procuring these warrants it found an established practice of attorneys dealing in warrants of their own procurement, which practice it had reason to believe, and believed, was with the full knowledge of the Bureau, and which not only was not the subject of any rule, but which also had not been the subject of any criticism by the Bureau, according to either the firm's knowledge or its surmise, is shown by the firm's answer to the citation and the affidavits of Messrs. Guerry, Johnston, Copp, and Fawcett.

"* * * The affidavits submitted show the practice to have been of quite thirty years' standing before your disapproval of it, and, if the firm's answer and the affidavits mentioned are not deemed sufficient to establish the fact of the long continuance of the practice with the knowledge of the Pension Bureau and its officers, you are respectfully invited to examine the officers of your Bureau on the subject, among them" (naming four prominent officials of the Bureau still in office,) (Pp. 8, 9).

Mr. Fawcett's affidavit is especially definite. He says:

161 "Between the years 1902 and 1906, inclusive, I visited the Pension Bureau on an average of once a week in connection with the firm's pension business, including, of course, its military bounty-land business. In the military bounty-land matters my dealings and conversations were usually had with ———, of ———, the division having in charge consideration of military bounty-land warrants. He knew, because he often spoke of the matter to me, that attorneys were purchasing from their clients bounty-land warrants, and while I cannot say that the other officials in the division knew about it, I yet feel morally certain that they did, because it was the general practice for attorneys to do it, and I never heard the practice questioned or any objections raised against it by any of

the officials of the Department until about December, 1906, when it came to my knowledge through the firm's transaction of the bounty-land-warrant case of Pygall that the Pension Bureau did not look with favor on attorneys purchasing warrants from clients who had employed them to secure the warrants."

The officers named in the several papers mentioned are accessible and, if invited to speak on the subject, must support the statements of the answer.

9. The character of the so-called testimony upon which the report professes to be based can scarcely be temperately characterized.

Having cited the respondents to answer certain charges under oath, and they having so answered, the Commissioner, reversing the recognized rule of procedure, without first presenting to the respondents the testimony supposed to support the charges, called upon them to produce evidence in support of their answer, thus substituting for the presumption of innocence the presumption of guilt. The respondents having submitted such testimony as they could judge to be called for, the Commissioner submitted his report, in which he not only enlarges upon and even adds to the charges, but also presents a résumé of what is called the testimony in support of both the original charges and their enlargements and additions and makes his recommendation accordingly, without any opportunity
162 whatever to the respondents to face the so-called witnesses and cross-examine them, or to submit in reply to their statements any facts or matter of what kind soever.

The nature of the so-called testimony thus produced through the medium of the Commissioner's report carries its own characterization: It consists of *ex parte* statements of so-called witnesses, some of them business rivals of the respondents, extracted by secret investigators of the Bureau, behind the backs of the respondents and, as to them, in the dark; it contains statement after statement of the baldest hearsay; it purports to present the contents of writings the originals of which are not produced, the absence of which is not accounted for, and the accounts of which are given, not only after long lapses of time, but also in response to promptings and leading questions of the most offensive character, and in some instances manifesting a plain attempt on the part of the investigator to draw from the so-called witnesses statements indicating a tampering with them by the respondents with a view to suppressing the truth.

It is sufficiently revolting to the professional mind thus to recognize the so-called testimony in question without being required to give it further consideration.

10. Perhaps the most reprehensible of all the features of the report is its dealing with the restitution, voluntarily made by the respondents, of the financial advantage accruing to them through their dealings with the warrants under consideration.

Meeting the charge that they sacrificed the interests of their clients to the sole end that they might secure sums of money to which they had no legal right and title, and premising that the same is abundantly answered by what is before set forth in the answer, the respondents in their answer state as follows (p. 25):

"Further meeting this charge, we beg to add that, since our at-

tention was attracted in 1906 to the discountenance by the Bureau of the practice mentioned, we have frankly realized that a nicer
 163 consideration and appreciation of our situation in dealing with these cases would have prevented our falling into the practice in question, and in attestation of this we have, of our own motion and without any outside intimation, advice, or suggestion whatsoever of the necessity or propriety of so doing, and without any request on the part of our clients, returned to each and every one of them the financial advantage accruing to us, not only in the cases under consideration, but also in all other cases in which we purchased a bounty-land warrant in the procurement of the issuance of which we had acted as attorney or agent for the warrantee."

Respecting this the report says (p. 156):

"These refundments were made by checks dated May 10, 1907; the citation was issued on April 13, 1907, and William E. Moses, attorney, of Denver, Colorado, and Washington, D. C., was disbarred on April 17, 1907, after committing exactly similar offenses to those charged against Milo B. Stevens & Co. in the first twelve cases named in the citation, and these facts would seem to take from what is urged as voluntary action on the part of the accused the greater part of this merit, and to indicate that they made the restitution for the simple reason that they had no defense to offer to the charges preferred against them and no hope to prevent disbarment except by an appeal for mercy, based upon the return of their ill-gotten gains."

All honorable-minded men can entertain but one opinion, and be tempted to but one expression, respecting such a statement. The fact is, as the record shows, that in December, 1906, more than six weeks before the decision in the Simpson case and more than four months before either the disbarment of Moses or the citation to themselves, the respondents, in the Pygall case, announced their abandonment of the practice under consideration; and the further fact is, that within a few days after the citation of the respondents' counsel signing this brief called in person upon the Secretary of the Interior and notified him of the declared purpose of the respondents to make restitution, and from the Secretary learned of the
 164 disbarment of Moses, and himself bore to the respondents their first information of that event. The gratuitous attempt to convert into an act of cowardice and cringing the honorable determination of the respondents to set right, as far as in them lay, an error of judgment which they manfully acknowledge, may be left to the appreciation and enjoyment of the mind capable of its conception.

11. The form and wording of the charges in themselves evidence the attitude of the Bureau of Pensions under consideration.

Section 5 of the act of July 4, 1884, relating to agents, attorneys, and other persons representing claimants before the Department, is the only law dealing with the subject, and its provisions are as follows:

"That the Secretary of Interior may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before his Department, and may require of such

persons, agents and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good moral character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable services, and otherwise competent to advise and assist such claimants in the presentation of their claims, and such Secretary may, after notice and opportunity for a hearing, suspend or exclude from further practice before his Department any such person, agent or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud in any manner deceive, mislead, or threaten any claimant, or prospective claimant, by word, circular, letter, or by advertisement." (23 Stats., 98, 101.)

Accordingly, in order to authorize and justify the disbarment of any attorney before the Department, it is essential that such attorney be charged with some one of the offenses thus indicated. In seeming recognition of the impossibility of making against the respondents any charge within the contemplation of this section, 165 the Commissioner of Pensions has, with more labor than adroitness, aimed to charge the respondents with alleged offenses supposed to be covered by sections 3 and 4 of the act.

The material relevant provisions of these sections are as follows:

"No agent or attorney, or other person, shall demand or receive any other compensation for his services in prosecuting a claim for pension or bounty land than such as the Commissioner of Pensions shall direct to be paid to him." (Section 3.)

"Any agent or attorney or other person instrumental in prosecuting any claim for pension or bounty land, who shall directly or indirectly contract for, demand, or receive, or retain, any greater compensation for his services or instrumentality in prosecuting a claim for pension or bounty land than is herein provided, or for payment thereof at any other time, or in any other manner than is herein provided, or who shall wrongfully withhold from a pensioner or claimant, the whole, or any part of the pension or claim allowed and due such pensioner or claimant, or the land warrant issued to any such claimant, shall be guilty of a misdemeanor, and upon conviction thereof shall for every such offense be fined not exceeding five hundred dollars, or imprisoned at hard labor not exceeding two years, or both, in the discretion of the court." (Section 4.)

The language of the charges in the citation to the respondents is as follows:

"You, and each of you, are hereby charged with improper, unprofessional and illegal conduct in connection with each claim for military bounty land jointly filed by you and mentioned in this letter in resorting to the methods, and in committing the specific offenses set forth below. (P. 1.)

"As the attorneys of record, it was your duty to have promptly turned the warrants over to your clients, and if it was your desire to purchase the same, to have made full disclosure to each client as to all the facts concerning the value of his warrant which might influence him in determining the question of sale. You failed to so de-

166 liver any warrant and failed to make any disclosure whatever as to the value thereof, but, on the contrary thereof, induced each of the said clients to assign to you the warrant you had secured to be issued, by offering an inadequate price therefor and by concealing from your client the market value of his warrant.

“You filed duplicate articles of agreement, as provided by the act of July 4, 1884, in various cases, as above stated, stipulating therein that you would endeavor to the best of your ability to faithfully represent the interests of your clients and would prosecute their claims in consideration of a fee of twenty-five dollars, when, as you well knew, it was not your intention to collect a legal fee for your services, but to indirectly obtain greater compensation than is provided by said act, by procuring the warrants at not over one dollar and twenty-five cents per acre, through taking advantage of your clients in such matters and in selling such warrants at their market value, this in violation of the provisions of sections 3 and 4 of said act, and in violation of the confidence of your said clients and of your professional duties in the premises.

“In filing such articles of agreement, when it was not your intention to comply therewith, you intended to, and did, for the time being, deceive this Bureau in the premises.

“Said warrants have not to this date been legally delivered to said clients and are illegally withheld from the warrantees, in violation of the provisions of sections 3 and 4 of the act of July 4, 1884, and in violation of your professional duty in the premises.” (Pp. 14, 15.)

“Upon the issue of such warrant [you] induced your clients to assign the same to * * * members of your firm, upon the payment of the smallest sums for which your said clients could be induced to part therewith, and you sold the warrants of said clients to warrant dealers at the highest prices which you were able to obtain, this in violation of the provisions of sections 3 and 4 of the act of July 4, 1884, and in violation of your professional duty to said clients.

“You, and each of you have sacrificed the interests of your said clients, in the manner set forth above, to the sole end that you might procure sums of money to which you had, and have, no legal right and title.” (Pp. 15, 16.)

In the report the charges are thus stated:

167 “While specific charges were made against the accused in connection with each of the fourteen cases above enumerated [being those in the citation], the charges in connection with the first twelve cases were substantially the same, and in substance that Eugene E. Stevens and Thomas R. Harney filed the applications for the military bounty-land warrants mentioned in this Bureau and prosecuted the same to a successful issue, that, in some cases, prior to the filing of the claims, and, in some cases, prior to the issue of the warrants, and, in all cases, prior to the receipt of the warrants by the warrantees, the accused entered into written or oral agreements with their said clients, by virtue of which the warrants were to be assigned to the accused in the event of issue, which

said assignments are absolutely void under the provisions of section 2436, R. S. U. S.

"That upon the issue of the warrants the accused caused the same to be delivered to them, as attorneys of the warrantees, and thereafter endorsed upon the warrants the forms for the assignment of said warrants to the accused, or in blank, for the benefit of the accused, and transmitted the warrants to their various agents, who caused their said clients to assign the said warrants to them for an inadequate price. That said warrants have never been legally delivered to the warrantees and are held from them in violation of the provisions of the act of July 4, 1884, and of the professional duty of the accused in the premises. That it was the duty of the accused to have advised their said clients of all the facts which would have assisted said clients in determining the propriety of the sale of the warrants for the amounts offered. That they failed to so advise their clients, and, by concealment, misrepresentations and false statements, caused the warrants to be assigned to them at a fraction of their real value, and thereafter sold said warrants at the market price, thus indirectly obtaining compensation for their services in the prosecution of said claims in excess of the compensation to which they were entitled for the services in that behalf, as provided by the act of July 4, 1884, and in violation of their professional duty in the premises, and that each of the accused sacrificed the interests of their said clients to the sole end that they might procure sums of money to which they had, and have, no legal right or title.

"In the cases Nos. 1, 4, 5, 6, 7, 8, 9, and 10 the accused filed duplicate articles of agreement, as provided by the act of July 4, 1884, stipulating therein that they would endeavor to the best of their ability to represent the interests of their clients and would
168 prosecute their claims in consideration of a fee of twenty-five dollars.

"It was also charged that the accused well knew that it was not their intention to collect a legal fee for their services in said claims, but to indirectly obtain greater compensation than is provided by said act by procuring the warrants by offering one dollar and twenty-five cents per acre, through taking advantage of the lack of knowledge of their clients in such matters and by selling such warrants at their market value; this in violation of the provisions of sections 3 and 4 of the act of July 4, 1884, and in violation of the confidence of said clients and of the professional duty of the accused in the premises, and that, in filing said articles of agreement when it was not the intention of the accused to comply therewith, they intended to, and did, for the time being, deceive this Bureau in the premises.

"In case No. 13 (Pygall) * * * it was alleged that the arrangement between the accused and the children of the deceased soldier * * * was and is champertous, and was and is a violation of the provisions of the act of July 4, 1884, in that the accused, in connection with the said claim, contracted for and demanded other compensation and greater compensation for their services in connection with the prosecution of the claim than is provided by the act of July 4, 1884; and in case No. 14, the rejected claim of Meta G.

Thornton, it was charged that on February 18, 1904, the accused jointly filed the application and the contract under the provisions of the act of July 4, 1884, executed by their said clients, covenanted in the fee contracts to faithfully represent the interests of their said claimant in consideration of a fee of twenty-five dollars.

"That in their letter of May 12, 1904, addressed to Mrs. Thornton, the accused stated *inter alia* that their said client could probably get as much as one dollar and twenty-five cents per acre for that warrant, which would make the warrant bring her two hundred dollars cash, when, as they well knew, on the day upon which said letter was written, if they had the warrant in their custody, they could have sold the same for not less than three dollars per acre.

"It is further charged in this case that they made additional false and misleading statements to their said clients * * * filed * * * a printed brief * * * and in their letter of April 25, 1905, falsely stated that the printer's bill alone is about equal to the fee
169 that their client had contracted to pay them * * * when, as they well knew, said printed brief did not cost twenty-five dollars, and that in fact the brief was not printed for the benefit of their client, but was printed for the sole purpose of exploiting their business." (Pp. 144-147.)

How far, if at all, these charges are within the purview and contemplation of section 5 of the act of July 4, 1884, conferring upon the Secretary of the Interior the power of disbarment, is considered hereinafter, in advance of which, for convenience, certain of the charges are here noticed with a view to their final elimination.

A. The charge respecting the Thornton brief is properly characterized in the answer in that case as without justification (p. 6), and in the answer in the Eaton case as both unwarranted and unworthy of the Bureau (p. 7). The charge itself is nothing more nor less than a perverse suspicion, if, indeed, it be more than a sinister suggestion, and it is wholly disproved by the evidence in the case, which shows, first, that at the time of neither statement of the respondents as to the cost of the brief did they know that cost; and, secondly, that the statement in the Eaton case was made most incidentally to the claimant's friend, Hollyday (Report, p. 55), and in strictly natural and regular connection with the statement of the respondents' purpose to prosecute in the Eaton case an appeal similar to that in the Thornton case, in connection with which the brief was prepared.

B. The charge that the respondents in filing duplicate articles of agreement in various cases, when, as they well knew, it was not their intention to collect a legal fee for their services and not their intention to comply with such agreements, intended to, and did, for the time being, deceive the Bureau in the premises, is as insignificant as it is unintelligible. Respecting this charge, the report says
170 of the respondents and the agreements entered into by them by virtue of which they were to receive the warrants:

"It was their uniform practice, as shown by the evidence, to make such an arrangement in connection with *each* case which they filed in this Bureau, and their own letters show that they stated to their

agents that it was by securing the assignments of the warrants and selling them that they expected to make their profits in the business.

"This being so, what could have been their motive in filing the fee contracts in the cases above mentioned, if it was not their motive to deceive the Bureau into believing that they were to receive legal fees for their services in such claims? There could have been no other possible motive, and, on general principles, intelligent men like the accused must certainly be held to have intended to do just what they did. They did deceive the Bureau" (p. 150).

It is obvious that the respondents could not have prosecuted any of the cases in question without filing either fee agreements or powers of attorney, and the evidence is clear that in every instance the assent of the claimant was essential to the agreement to sell the warrant; so that, had the claimant not assented, the respondents would nevertheless have gone on under the fee agreement or power of attorney to prosecute the case to a conclusion. In other words, the respondents had to file the fee agreements or powers of attorney, but they could not, and did not, know whether they were to become the purchasers of the warrant until the agreement in that behalf had been made.

How the Bureau could have been deceived in the premises in respect of any matter concerning which it had a right to know is not seen. It was no affair of the Bureau what might become of the warrant when issued; all that the Bureau had a right to know was that the persons professing to prosecute the claim were the persons properly entitled to do so and were doing so in conformity with the law and requirements of the Department. It is not pretended that

any function of the Bureau was in anywise affected by its
171 ignorance of the ultimate fate of the warrant, and, speaking plainly, that matter was no affair of the Bureau. It is for these reasons that it is said that the charge is unintelligible; and that it is insignificant is plain from the fact that what the respondents did in nowise affected the Bureau in any of its functions or operations.

And the statement that it was the uniform practice of the respondents, "*as shown by the evidence*," to make such an arrangement in connection with "each" case is typically reckless. The records of the Bureau show that in seventeen cases the respondents made no such arrangement, but prosecuted the cases for the usual fees, which they collected.*

*In the answer and testimony of the respondents, the number of cases successfully prosecuted by them for bounty land warrants is erroneously stated as thirty-seven; it should have been forty. Three cases—No. 20, Shannon; No. 23, Hughes, and No. 27, Chambers—were inadvertently omitted; but in none of them did the firm or any member buy the warrant; and No. 23 was developed from a pension case, and the others through pension correspondence, though in them no pension claims were filed by the respondents. The omission of these cases from the answer was due to a clerical error in failing to enter them in the firm's special docket in which the record of

such cases was kept, and from which the answer and testimony supporting it were prepared.

C. The charge that the warrants in question have not been legally delivered to the warrantees, but are illegally withheld from them, in violation of the provisions of the act of July 4, 1884, cannot be accurately characterized as other than puerile. The language of the act is "*wrongfully withhold*." In every case the warrant was actually presented to and signed by the warrantee, in pursuance of the warrantee's agreement to sign it, and in consideration of money actually paid; and in law as well as in fact the exercise by the warrantee of the fact of ownership and dominion involved in the assignment of necessity equally involved possession; and as in each instance the warrantee had, in advance of the presentation of the warrant, agreed to its destiny, namely, its ultimate possession by the respondents as their property, in accordance with the terms of the agreement, the suggestion that in any case the respondents, whether wrongfully or otherwise, withheld the warrant is simply preposterous and of a piece with the general vindictiveness of the charges and their treatment.

Discussion on this point was closed by the Supreme Court of the United States more than a decade ago, in a case in which the facts were as follows: The check issued for the payment of a pensioner was received by the accused, a pension agent, who went with the pensioner to a bank, where, in the presence of an officer of the bank, the check was endorsed and was presented to the paying teller, by whom the amount was paid over to or "put into the hat" of the pensioner. Upon the suggestion of either the bank officer or the accused, the money was deposited in the bank for account of the pensioner, a deposit slip being issued therefor. Immediately after this deposit the pensioner went to an office in the vicinity, where a check for \$1,887.34, one-half of the amount of the pension check, was drawn by her, she making her mark, and the check being payable to the order of a son of the accused, by whom it was immediately collected. The pensioner testified that she supposed the check was drawn for \$25 in favor of her own son. At the trial, counsel for the accused asked the following instruction:

"When a pension check is delivered to a pensioner, and she takes the same to a bank and has it cashed, and then deposits the said fund in a bank and takes a deposit slip therefor, the fund loses its nature and character as pension money, and the ordinary relation of debtor and creditor exists between the pensioner and the bank, and if thereafter, by any device, or in any way whatever, the pension attorney obtains a draft from her and draws it out of her general account, he cannot be convicted of withholding under U. S. R. S., section 5485, and it would be your duty to acquit him on that count, if these be the facts as to that branch of the case."

173 This instruction was refused by the court, which instructed the jury as follows:

"If you believe that the receipt of the pension check under all the circumstances connected with it, and the possession of the pension check by the defendant in this case, and the taking of the check to

the bank and his accompanying the pensioner to the bank, the turning of the check into cash, and the payment of money to her, the physical possession placed in her by putting the money in her hat, the deposit of the money in the bank, and the taking of the pensioner to the office of the defendant, and the drawing of the check for \$1,800—of you believe that this was all one transaction, arranged and designed by the defendant in this case for the purpose of getting into his possession \$1,800 of the money which the pensioner received; that it was a scheme designed by him, one continuous transaction, for that purpose, and that he was a party to it, and was the beneficiary of the money received—then that would be in law a withholding of the money under this statute, and the defendant would be guilty, and it would be your duty to convict him.”

The Supreme Court held the action of the trial court to be error, saying as follows:

“The refusal of the court to give the charge asked, and the charge by it given, proceeded upon the theory that, although pension money was actually paid over to the pensioner and by her deposited in bank, the obtaining thereafter of such money from the pensioner constituted a withholding under the statute just quoted. The word ‘withholding’ has a definite signification, and we think contemplates, as used in the statute under consideration, not the fraudulent obtaining of money from a pensioner, but the withholding of the money before it reaches the hands of the pensioner and passes under his dominion and absolute control. The context of the statute supports this view, for its penalty is imposed for the wrongful withholding of the whole or any part of any pension claim allowed and due such pensioner, and not for a wrongful obtaining of the same. The fact that the offense of withholding is limited in any agent or attorney or other

174 person instrumental in prosecuting any claim for pension demonstrates that Congress intended to legislate merely against the wrongful withholding by certain individuals, who, by reason of their relation to the pensioner and his claim, might lawfully obtain possession of the same from the Government, upon whom rested the duty of paying it over to the pensioner. * * *

These reasons make it clear that the purpose of the statute in punishing a withholding by certain persons standing in a fiduciary relation to the pensioner is consistent only with the theory that Congress was legislating to prevent an embezzlement of pension money, not a larceny thereof from the pensioner or the obtaining of the same from him by false pretenses.”

Balley v. U. S., 160 U. S., 187, 189, 190, 194-’5.

V.

The Acts Charged Are Not Offenses in Law.

Assuming—what is hereinafter denied for reasons given—that this Department has jurisdiction to consider and determine the question, it is submitted that the acts charged upon the respondents do not constitute offenses in law.

1. No violation by the respondents of sections 3 and 4, or either,

of the act of July 4, 1884, appears, or is, either in fact or in law, charged upon the respondents.

In addition to what is hereinbefore said on this point, it is to be observed that the act in question aims at the prevention of two things, namely: (1) the contracting for, demanding or receiving by an agent or attorney "any greater compensation for his *services or instrumentality in prosecuting* a claim for pension or bounty land" than as provided by the act, and (2) the *wrongfully withholding* any part of the pension or claim, or the land warrant, as the case may be.

Very clearly, "services or instrumentality in prosecuting a claim," for which, as such, the claimant may be charged, is predicable only of something done, or to be done, the result of which the claimant is to have; the language can by no possibility apply to a

case in which the claimant in advance divests himself of the
175 result before its production. In such a case, by the terms of

the bargain in that behalf, it is the claimant and not the agent who is being paid, and it is the result of the services that is being paid for, and not the services themselves. Whether the agent ought to have made the bargain is one thing, and is considered hereinafter; but to say that a bargain to buy a given thing is in any sense a fixing by the purchaser of a price for obtaining that thing for the seller, is to speak plainly, absurd. In such case, the agent is not charging for his services in procuring the thing in question for the claimant, he is bargaining to buy the thing for himself. If, therefore, he is guilty of any offense, it is not in overcharging the claimant, but in making such a bargain—which latter, as is presently to be shown, is in fact no offense at all.

The statutory law very clearly recognizes the distinction here made, as witness the essentially different provisions of the act of 1884 and of section 2436, R. S. U. S., about to be considered. The former forbids and makes penal the act of overcharging; the latter merely makes void (in fact and in law voidable only), the bargains in question.

2. And no supposed violation of section 2436, R. S. U. S., is involved in the premises. The provisions of that section, which were originally part of section 9 of the act of Congress of February 11, 1847 (9 Stats. L. p. 125), and of section 4 of the act of Congress of September 28, 1850 (9 Stats. L., p. 521)," "granting bounty land to certain officers and soldiers who have been engaged in the military service of the United States," are as follows:

"All sales, mortgages, letters of attorney, or other instruments of writing, going to affect the title or claim to any warrant issued, or to be issued, or any land granted, or to be granted, under the preceding provisions of this chapter, made or executed prior to the issue of such warrant, shall be null and void to all intents and purposes whatsoever; nor shall such warrant, or the land obtained thereby, be
176 in anywise affected by, or charged with, or subject to, the payment of any debt or claim incurred by any officer or soldier, prior to the issuing of the patent."

The meaning of these provisions is simple and plain: They simply, first, make void (or, to be exact, and as is clearly shown by the

decisions about to be cited, *voidable only at the option of either party thereto*), all instruments of writing of the character mentioned, and secondly, absolve any certificate or warrant, or the land obtained thereby, from liability on account of any debt or claim incurred by the warrantee prior to the issue of the warrant or the patent following thereupon. The being party to such instrument of writing is not made an offense, and no penalty is prescribed in respect thereof; it is only enacted that they shall be null and void, just as in the case of the statute of frauds it is not made an offense to make an agreement otherwise than in accordance with the terms of the statute, but such agreements are declared to be inefficient and incapable of establishment and enforcement by one of the parties thereto against the other, such other being unwilling that they should be enforced. And not only is no offense created, but also there is no taint of immorality attached to either the instruments themselves or the transactions which they express and to which they relate.

To repeat: the validity of the instruments or the transactions to which they relate is confined to their enforceability; and that an agreement is incapable of enforcement is no test of its immorality or of anything but its compulsory enforceability as between the parties themselves.

The position of the Supreme Court of the United States on this point is of consistent uniform long standing. Thus, where a bill was filed to recover possession of a fund, the proceeds of a contract made void by statute, that court held as follows:

"It is urged * * * that the contract with General Mina being illegal, the sale and assignment of it through Goodwin to Oliver must also be illegal * * * But this position is not maintainable. * * * The assignment was subsequent, collateral to, and wholly independent of, the illegal transactions upon which the principal contract was founded. * * * In consequence of the illegality, the contract was invalid, and incapable of being enforced in a court of justice. The fulfillment depended altogether upon the voluntary act of Mina, or of those representing him.

"No obligation existed, except what arose from a sense of honor on the part of those deriving a benefit from the transaction out of which it arose. Its value rested upon this ground, and this alone. The demand was simply a debt of honor. *But if the party who might set up the illegality chooses to waive it and pay the money, he cannot afterwards reclaim it.* And even if the money be paid to a third person for the other party, such third person cannot set up the illegality of the contract on which the payment has been made, and withhold it for himself."

McBlair v. Gibbs, 17 How., 232, 236.

And in a case arising under the very law under consideration, there was a partnership, the business of which was to be confined to the purchase and sale of bounty land warrants and Treasury scrip issued or to be issued under the act of Congress. In a suit by the representative of one partner against another for an accounting, it

was contended that the business for which the partnership was formed was illegal, and therefore that the defendant could not be called to an accounting of the profits. The court thus disposed of this contention:

"It is set up by defendant, and relied on in his answer, that this was an illegal traffic, forbidden by the act of Congress above referred to, and against public policy. * * * We think that, in point of fact, the allegation of the answer is true. * * * We have as little doubt that the traffic was illegal. * * *

"Undoubtedly, the main object of this provision was to protect the soldier against improvident contracts, of the precise character of those developed in this record. It was a wise and humane policy, and no court could hesitate to enforce it, *in a case which called for its application*. If a soldier, who had thus sold his claim to Brooks,

Field & Co., had refused to perform his contract, or to do
178 any act which was necessary to give them the full benefit of their purchase, no court would have compelled him to do it, or given them any relief against him. And if they had, by any such means, got possession of the land warrant or scrip of a soldier, no court would have refused, in a proper suit, to compel them to deliver up such land warrant or scrip to the soldier. Or if Brooks, after the signing of these articles of partnership, had said to Martin, 'I refuse to proceed with this partnership, because the purpose of it is illegal,' Martin would have been entirely without remedy. If, on the other hand, he had said to Martin, 'I have bought one hundred soldiers' claims, for which I have agreed to pay a certain sum, which I require you to advance, according to your agreement,' Martin might have refused to comply with such demand, and no court would have given either of his partners any remedy for such a refusal. To this extent go the cases * * * cited by counsel for appellant, and no further.

"All the cases here supposed, however, differ materially from the one now before us. When the bill in the present case was filed, all the claims of soldiers thus illegally purchased by the partnership, with money advanced by complainant, had been converted into land warrants, and all the warrants had been sold or located. *The original defect in the purchase had, in many cases, been cured by the assignment of the warrant by the soldier after its issue*. A large proportion of the lands so located had also been sold, and the money paid for some of it and notes and mortgages given for the remainder. There were then in the hands of defendant lands, money, notes, and mortgages, the results of the partnership business, the original capital for which plaintiff had advanced. It is to have an account of these funds, and a division of these proceeds, that this bill is filed. Does it lie in the mouth of the partner who has, by fraudulent means, obtained possession and control of all these funds, to refuse to do equity to his other partners, because of the wrong originally done or intended to the soldier? It is difficult to perceive how the statute, enacted for the benefit of the soldier, is to be rendered any more effective by leaving all this in the hands of Brooks, instead of requiring him to execute justice as between himself and his partner; or

what rule of public morals will be weakened by compelling him to do so. The title to the lands is not rendered void by the
179 statute. It interposes no obstacle to the collection of the notes and mortgages. The transactions which were illegal have become accomplished facts, and cannot be affected by any action of the court in this case."

Brooks v. Martin, 2 Wall., 70.

Accordingly the court compelled the accounting asked for, as clearly it would not have done had it thought the transactions immoral, as distinguished from being merely of a character such that, by virtue of a statutory provision, they were incapable of compulsory enforcement by either of the original parties thereto against the other; for the maxim of the law, *ex turpi causa non oritur actio*, is rigidly applied, and it is a favorite judicial declaration that the law leaves parties to an immoral transaction where it finds them. And so far from viewing such transactions as immoral, the court, in the earlier case of *McBlair v. Gibbs*, characterized the obligation between the parties as "a debt of honor," and held, in accordance with the uniform rule, that a party to such a transaction who chooses to respect it and live up to it is without remedy to recover what he may have paid under it; just as, in the case of the respondents, had they elected not to account to the warrantees for the financial advantages accruing to them in the transactions under consideration, the warrantees would be without remedy to recover from them.

In an analogous case the Supreme Court has held similarly.

Section 3477, R. S. U. S., provides as follows:

"All transfers and assignments made of any claim upon the United States; or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses
180 after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof."

Notwithstanding the sweeping and stringent provisions of this law, the Comptroller of the Treasury recognized a power of attorney of the sort prohibited and issued a draft to an attorney-in-fact in payment of a claim, which power of attorney was given before the adjustment and allowance of the claim, and the attorney collected the draft and retained the proceeds. The claimants thereupon demanded payment to themselves by the Treasury Department, which was refused, and they brought suit against the United States in the Court of Claims. The Supreme Court, in sustaining a judgment in favor of the United States, spoke as follows:

"It is contended, on behalf of appellants, that the power of attorney executed in 1869 to Godeffroy—upon the authority of which alone was payment made to him—was, under the laws of the United States, absolutely null and void; consequently no payment under it

could bind the claimants or discharge the Government from its obligation to pay the sums specified in the act of 1870. * * *

"These enactments have been under examination in several cases heretofore decided in this court, some of which are now relied on to support the proposition that officers of the Treasury were forbidden, by statute, from recognizing Godeffroy, under any circumstances, as agent of claimants, with authority, as between them and the Government, to receive the warrant and draft when issued. * * *

"In the case before us, no question arises as to the transfer or assignment of a claim against the Government. The question is, whether payment to one, who has been authorized to receive it, by the power of attorney executed before the allowance of the claim by the act of Congress, was good as between the Government and the claimant, where, at the time of payment, such power of attorney was unrevoked. * * *

A mere power of attorney given before the warrant is issued—so long, at least, as it is unexecuted—may undoubtedly be treated by the claimant as absolutely null and void in in any contest between him and his attorney-in-fact. And it may

be so regarded by the officers of the Government, whose duty
181 it is to adjust the claim and issue a warrant for its amount.

But if those officers choose to make payment to the person whom the claimant, by former power of attorney, has accredited to them as authorized to receive payment, the claimant cannot be permitted to make his own disregard of the statute the basis for impeaching the settlement had with his agent."

Bailey v. U. S., 109 U. S., 432.

Like the other cases, this case shows that all such statutes as that now under consideration are specific in purpose and provision and must be construed and applied accordingly; and that the protection afforded to a party by any provision of law may be lost or waived by him by his voluntary act, without involving any imputation of immorality or dishonesty to any party dealing with him. Especially is this so in light of the fundamental principles that every one is supposed to know the law, that ignorance of the law excuses no one, and that money paid under a mistake of law cannot be recovered back.

Accordingly it is a misuse of language to speak of the disregard of such a law as that under consideration as a violation of law imputing the commission of an offense. The plain doctrine of the Supreme Court, which is the doctrine of all courts, is that where parties choose to enter into transactions in contravention of the provisions of a statute they cannot insist upon those transactions as against any party thereto who is unwilling to carry them into execution; that where, however, the parties mutually carry such transactions into execution, they cannot ask to have them undone upon the ground that they were improperly entered into; that, outside of the parties themselves to the transactions, and except in respect of the attempt to execute the very transactions themselves, there is no opportunity or right of complaint; and that under no circumstances has any outside party a right to bring to account any of the parties to the

transactions in respect of non-observance of the statutory provisions involved.

182 And the adjudications cited show, beyond all doubt, that, in the opinion of the highest judicial authority, the word "void," where used in the legislation under consideration, in fact and in law means "voidable" only. This is in accordance with the familiar view of all courts, that where the effect of the word, as used, is given due consideration, it means voidable, and not void in the usual sense of the word.

Thus it is held, that the term "void" is equivocal, and may mean absolutely null, or merely voidable; that it is an indefinite expression, having no fixed meaning, and what is only voidable is often called "void;" that it is a common practice of legislatures and courts to use the words "void" and "voidable" interchangeably; that courts often speak of acts and contracts as "void," when they mean no more than that some party concerned has a right to avoid them; that the word "void" is not infrequently used in enactments, in opinions, in contracts, and in arguments in the sense of voidable, that is capable of being avoided; that where the word "void" is used, respecting the rights of individuals capable of protecting themselves, it will often be held to mean voidable only; and that the courts sometimes call contracts "unlawful" and "illegal," when it will be found that these terms are used in the sense merely of "void" or "unenforceable," as between the parties.

Mailhoit v. Met. Life Ins. Co., 87 Me., 374.

Larkin v. Saffarans, 15 Fed., 147, 152.

Election Cases, 65 Pa., 20, 34.

U. S. v. Winona, etc., Co., 67 Fed., 948, 954.

Beecher v. Marquette, etc., Co., 45 Mich., 103.

Van Schaack v. Robbins, 36 Iowa, 201, 203.

State v. Richmond, 26 N. H., 232, 237.

Bohn Mfg. Co., v. Hollis, 54 Minn., 223.

183 Authorities to the same effect, practically without number, might be cited, but those cited and "the reason of the thing," as appearing from the intent and supposed necessity of the legislation under consideration, show to a demonstration that the word "void," as used, means "voidable" only; and, as, upon even the nicest considerations of propriety and right conduct, it cannot be said to be an offense, either legal or moral, to do what is voidable only at the option of either party to the act under consideration, the supposed charges that, in any of the matters under discussion, the respondents were, or could be, guilty of any offense fall of their own weight.

VI.

The Charges Are Not Within the Department's Jurisdiction.

The supposed offenses charged upon the respondents are not within the jurisdiction of the Department, or the Secretary, of the Interior.

It may freely be conceded that in the case of a court, one of the regularly ordained and established tribunals for the administration of

justice, there exists an inherent power, which cannot be taken away even by the legislature, of what may be termed self-preservation for the administration of justice. This power reaches all alike, whether lawyer or layman, and is ever ready to be invoked to protect the court against contempts or whatsoever may tend to threaten to hinder or obstruct the administration of the law. Beyond this conceded power, however, no court, in the face of legislative regulation, may claim anything as of inherent right, not even power over the attorneys practicing before it.

The distinction thus suggested reconciles all judicial utterances whatsoever touching the respective powers of the courts and the legislature under consideration. The distinction may be stated accurately and precisely thus: Whatever is essential to the preservation of respect for the court, and of the orderly administration of justice by the court, that it is inherently in the power of the court to exact and
 184 to compel; beyond this—as, for example, to prescribe the terms upon which the citizen may become, or continue to be, an attorney-at-law—no court may go in the face of the legislature.

Thus it is held that a statute declaring that no attorney who has been duly licensed to practice law shall be disbarred or deprived of his license and right to practice, except upon conviction for a criminal offense, or after confession in open court, is constitutional, and that such an act does not take away any of the inherent rights which are essential in the administration of justice.

Ex parte Schenck, 65 N. C., 352.

And such an act limits the power of disbarment to the cases provided; for where a statute enumerates grounds for disbarment, no other grounds can be considered by the court.

Ex parte Schenck, *ubi supra*.

Kane v. Haywood, 66 N. C., 1.

Ex parte Smith, 28 Ind., 47.

In re Eaton, 4 N. Dak., 514.

Such being the law's rule as to a court, how much stronger is it in the case of a tribunal not belonging to the judiciary, and therefore not having any of the inherent power mentioned, but depending for whatever power it has upon the very statute under which it is professing to act, and by which accordingly it must itself be bound. Thus, without the statute the Secretary of the Interior could not at all regulate the recognition of practitioners before the Department; under the statute he cannot exact attainments or prescribe qualifications beyond those which the statute fixes; and he cannot disqualify a practitioner for a reason not named by the statute, any more than he can administer punishment beyond its prescription.

The statute thus, and thus only, empowers the Secretary in the respect under consideration; he

“may, after notice and opportunity for a hearing, suspend or exclude from further practice before his department any such
 185 person, agent or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regu-

lations, or who, shall with intent to defraud in any manner deceive, mislead, or threaten any claimant, or prospective claimant, by word, circular, letter, or by advertisement."

In considering the case the Secretary can, of course, regard only the charges mentioned in the citation to the respondents; but not only those charges, but also the amplified accusations of the report, will be read in vain in the endeavor to find anything, however insignificant, responding to the provisions of the statute; even the petty "charge" about the brief in the Thornton case does not allege that the statement concerning its cost either deceived or misled Mrs. Thornton or Mrs. Eaton, or was meant so to do, either with or without intent to defraud. The test of the charges, irrespective of the question of their truth or falseness, is simple and conclusive: Under which charge can the Secretary find either respondent guilty of (1) incompetence, (2) disrepute, (3) refusal to comply with the proper rules and regulations, (4) deceiving, (5) misleading, or (6) threatening any claimant, with intent to defraud?

In very truth, as above stated (*ante*, p. 57), the form and wording of the charges, in both the citation and the report, evince a recognition by the Commissioner of the impossibility of making against the respondents any charge within the contemplation of the statute; wherefore he has undertaken to charge them with violation of the act of 1884, which, being a crime, is for the courts and not this Department; with violation of section 2436, R. S. U. S., which is no offense of any kind; and with not observing in certain cases what the Commissioner designates their professional duty, thereby pretending that practitioners before his Bureau are to be judged in respect of their conduct by the high, exacting, and stringent ethical
 186 standard which courts have erected for observance by the particular set of court officers known as attorneys-at-law.

No one of the charges under consideration, therefore, is tenable under the statute, and this consideration alone should dispose of the case.

VII.

The Respondents Are, in No Event, Justly Subject to Reprobation.

The respondents and counsel are fully alive to the obvious suggestion that it is one thing thus to dispose of the matter under consideration and quite another to judge attorneys, parties to such transactions, whose conduct is under inquiry. But, in the last analyses, this amounts to resolving the inquiry into this: Whether, under all the circumstances of the case, the conduct of the attorneys in question is such as to merit reprobation to the extreme extent of disbarment. Had the Commissioner been content to present this question in its simplicity, instead of charging the respondents, in imitation of an indictment, with assumed offenses in supposed violation of the law, much, if not all, of the foregoing refutation of such charges would have been unnecessary; that refutation, however, it is confidently submitted, is complete as respects the question whether the respondents have been guilty of any actual violation of any law in the matters under consideration; and if, as might properly be the

case, the fate of the prosecution of the respondents were made to turn upon the question whether the charges have been made good, discussion might well end here.

Recognizing, however, that the conduct of the respondents, as distinguished from actual violation by them of the law, is implicated in the charges, as though the respondents were attorneys-at-law and to be judged as such, the question just suggested, namely,
 187 whether, under all the circumstances of the case, that conduct has been such as to merit reprobation to the extent of disbarment, will now be considered.

1. It is to be premised, however, that the respondents are not to be judged in the premises as though they were attorneys-at-law.

The severe and, as may be admitted, justly severe, ethical standard, violation of which is imputed to the respondents, is not applicable to them, or others in similar situation, but, on the contrary, is special in conception, limited in application, and, in a just sense, arbitrary. That standard is set up only for the particular class, attorneys-at-law, for whom the rigid rule of conduct involved is laid down, only because that class is a particular class, and unique in its constitution and privileges, and, accordingly, in its obligations. From the beginning, it has been held that the office of an attorney, as said by Holt, Chief Justice, in *White's case*, 6 Mod., 18, "is for the administration of justice"; or, as said by Lord Hardwick, in *Walmesbury v. Booth*, Barn, Ch., 478, attorneys are "public officers and ministers of justice"; or, as said by the Supreme Court of the United States in *Ex parte Garland*, 4 Wall., 333, they are officers of the court and, from the entry of the order of their admission, they become such officers and are responsible to the court for professional misconduct.

It is because attorneys-at-law are thus declared and recognized to be ministers of justice and officers of the court before which they are entrusted with the business of those seeking justice, that they are charged with the high responsibility and held to the strict accountability embraced within the rule in question. As ministers they are looked to, and as officers of the court they are relied upon, to aid the court in the administration of justice, and in that behalf they are expected and required to live by the highest ethical standard, in

accordance with which, by virtue of their unique position,
 188 they invite themselves to be judged; and, as they so invite themselves to be judged, they hold themselves liable to whatever penalty may be inflicted upon them for an infraction of the accepted standard of conduct, even to the extent of being deprived of their position, justly considered to be next only to that of the court itself, and essential to be preserved in equal purity with that of the court itself. They are, accordingly, expected and required to seek, and indeed to attain and maintain, the very highest ideals of the conduct of those to whom is submitted so great and so sacred a power as the administration of that justice for which, as has been said, with equal loftiness of conception and poetry of expression, "all place a temple, and all seasons summer."

That for ministers of such a calling no ethical requirement of conduct can be too high should go without the saying; and it is

equally true that, because of this requirement, the profession, as represented by its best exemplars, has become what it is and has merited to the full the just judgment of history. But it is yet not a reflection upon any other class to say that, not being charged with duties of the same order, not being reared in the school in which those duties are taught, nor breathing its atmosphere, and not being called upon to meet those duties, the very discharge of which, by inevitable reflex influence, strengthens the conceptions and elevates the standards in accordance with which they are to be discharged, may not, indeed cannot, be expected to be subject to the same motives or to be held to the same strictness of conduct and responsibility. It may suffice to say that, in the light of human experience, all judgments are at one on the proposition that, because of its unique position, the unique demands upon it, and the unique opportunity in meeting those demands to cherish and cultivate the principles in accordance with which the profession is expected to live, it is the profession of lawyers only of whom the standard of conduct under discussion is exacted.

189 Accordingly, it needs but the briefest consideration and the slightest reflection to show, that a class of practitioners before an Executive Department of the Government, such as is now under consideration, is by no stretch of idealism to be brought within the same category as the profession for which the rule of conduct in question has been prescribed. The members of such a class are in no sense officers of the tribunal before which they appear; in no sense part of that tribunal itself, and in no sense ministers of justice, as are attorneys-at-law; their function is, not to aid the tribunal, but to aid claimants before it; the language of the law is that they shall be "possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their claims;" and, so far are they from being in any analogy to attorneys-at-law that, not only are they not required to be of any particular calling, or to have more than the mere practical qualifications indicated for doing what they undertake, but also, before the passage of the comparatively recent act now governing the subject, they were not even required to be of lawful age, and were admitted to their functions upon the simple condition of subscribing an oath to perform the same faithfully.

Wherefore any attempt to apply to such a class the rigid and unique standard which, for the reasons indicated, and for those reasons alone, is applicable to attorneys-at-law would be an anomaly without parallel and beyond all justification: not that the class is to be given a free lance to use with free hand towards all against whom it may be leveled, but the members of the class are to be judged only as others engaged in the practical affairs of life, and while to be held accountable for the ordinary properties of conduct, are yet to be held to no higher accountability, and are to be allowed the ordinary indulgences properly to be allowed the average man in respect of the unheeding lapses and mistakes in conduct from which none, either the average or the highest, is at all times free.

190 2. And before passing to a consideration of the conduct of the respondents, as shown by the record, and considering how it is to be judged in the light of the charges, it is not amiss first to consider the attitude of courts towards even attorneys-at-law in respect of their professional conduct when brought under consideration with a view to discipline.

The office of an attorney and the proper attitude of courts towards its incumbents have been so frequently the subject of judicial expression that any collection of the cases in which such expression has been made would be quite encyclopedic in character. A few cases may fortunately be taken as illustrative of all, for the reason that quite all courts exhibit the same temper and govern themselves by the same considerations in dealing with the matter. Thus, referring to the office, the Supreme Court of the United States speaks as follows:

"The office which the party thus acquires is one of value, and often becomes the source of great honor and emolument to its possessor. To most persons who enter the profession, it is the means of support to themselves and their families. To deprive one of an office of this character would often be to decree poverty to himself and destitution to his family. A removal from the bar should, therefore, never be decreed where any punishment less severe—such as reprimand, temporary suspension, or fine—would accomplish the end desired."

Bradley v. Fisher, 13 Wall., 335.

And the same learned justice delivering the opinion in this case, said later of the disbarment of an attorney:

"Surely the tremendous power of inflicting such a punishment should never be permitted to be exercised unless absolutely necessary to protect the court and public from one shown by the clearest legal proof to be unfit to be a member of an honorable profession."

Ex parte Wall, 107 U. S., 318.

191 Another court of high authority states the matter thus:

"The consequences of a conviction in a case like this are most disastrous to the party accused, and no slight evidence will warrant the conviction. Even if we should hold that the party had been guilty of some slight indiscretion, it does not follow that his name ought to be stricken from the roll of attorneys.

"A man's profession is sometimes all his means of livelihood. It has cost him much labor and intense study through many weary years. It is to him valuable capital, and he ought not to be denied the right to exercise its duties and receive the emoluments attached thereto, except upon clear proof of willful and corrupt professional misconduct."

People ex rel. Shufeldt v. Barker, 56 Ill., 299, 303.

The same court in a former case held that in a proceeding to strike the name of an attorney from the roll, though it may appear that the party charged has not conducted himself with the scrupulous regard to propriety which the honorable nature of the legal

profession requires, yet the court must be satisfied that the motive of the attorney was improper, saying:

“The case must be clear, and free from doubt, not only as to the act charged, but as to the motive.”

People *ex rel.* Harvey, 41 Ill., 277, 278.

And in its latest utterance on the subject, the court speaks thus:

“In People *v.* Matthews, 217 Ill., 94, which was a disbarment proceeding, the court found that the evidence tended to prove the charges in the information, but said (p. 103), ‘A careful consideration of the testimony leaves us unable to say that the charges set forth in the information filed against the respondent have been sustained by the character of proof required to justify the legal conclusion of guilt. The punishment to be inflicted by disbarment of an attorney is the destruction of his professional life. Only clear and satisfactory proof can justify a decision from which would flow consequences of such grave nature. In People *ex rel. v.* Harvey, 41 Ill., 277, we said that to justify the infliction of such heavy punishment as disbarment, the case must be clear and free from doubt, not only as to the act charged, but as to the motive.’ ”

People *v.* Thornton, 228 Ill., 42.

To the same effect are the cases of—

State *ex rel.* Rude *v.* Young, 30 Fla., 85.

State *ex rel.* Fowler *v.* Finley, *Id.*, 325.

In the case of Eaton, 4 N. Dak., 514, hereinbefore cited, the court, in common with many others, holds (p. 531):

“The uniform current of authority requires the charges in cases of this character to be established by a clear and undoubted preponderance of testimony,”

“which testimony,” as the Supreme Court of Texas declares, “must show the act complained of to have been done with a corrupt motive or evil intent, and repel the supposition that it may have been done from inadvertence.”

Jackson *v.* State, 21 Texas, 668, 675. •

The case of State *ex rel.* Fowler *v.* Finley, 30 Fla., 325, is especially well considered, and with unusual clearness and force states the law governing the subject generally as follows:

That charges preferred against an attorney for the purpose of disbarring him should be clear, specific and circumstantial, and should be stated with great particularity, that the attorney may know how to defend;

That in the trial of a proceeding for disbarment of an attorney the judge, being the arbiter of both the law and the facts, should not delegate the taking of evidence therein to another, but should personally hear the evidence of the witnesses for and against the accused, so that in lending or withholding credence to it he may be governed by the same rules and reasons that influence juries when

sitting as triers of facts, from an observance of the manner and deportment of the witnesses;

193 That where the acts charged against an attorney in a proceeding for disbarment are proved to have been committed, but the proof fails entirely to disclose any bad or fraudulent motive for the commission thereof, either from the act itself or from other circumstances, disbarment is not authorized.

In the course of its opinion in this case the court uses this characterization:

"The severe penalty of disbarment, that is always deeply humiliating to an attorney, and often most disastrous, not only to himself, but to his unoffending family, dependent upon his professional efforts for their existence" (pp. 339, 340);

and refused a judgment of disbarment in the case, saying of the act charged upon the respondent:

"There were no elements in it that mark him as a corrupt practitioner against whom the public should be protected by destroying his official life as an attorney" (p. 346).

This case is also reported in 18 L. R. A., 401.

In line with the judicial attitude thus expressed are many cases, of which the following are examples:

Where an attorney charged with misconduct in improperly advertising to obtain divorces admitted the advertising, but set up in his answer that he was ignorant that it was wrong so to do, and that on the commencement of the proceedings against him he had ceased the objectionable advertising, and promised to abide by and obey any directions of the court in the premises, should it adjudge what he had done to be wrong, it was held that suspension from practice for a few months, instead of disbarment, was a sufficient penalty, the court saying:

"A court intrusted with the power to admit and disbar attorneys should be considerate and careful in exercising its jurisdiction; the interests of the respondents must, in every case, be weighed in the balance against the rights of the public; and the court should endeavor to guard and protect both with fairness and impartiality."

People v. McCabe, 18 Colo., 186, 191.

Where an attorney, some years before the proceeding against him, had wrongfully appropriated moneys entrusted to him by his client, but without any actual intent to defraud, and in the expectation of paying the moneys over when required, and did pay them over, not, however, as soon as required, but before the proceeding was instituted, and since the misappropriation had conducted himself with integrity, it was held that the circumstances did not warrant the conclusion that he was, at the time of the proceeding, unworthy of the confidence of clients, and did not require either his disbarment or his suspension from practice—the court, one of the most scrupulous in the country, saying:

"In exercising summary jurisdiction over attorneys, as distinct from other people, courts have in view two leading objects: one, to

compel the attorney to deal fairly and honestly with his client; * * * the other, to remove from the profession a person whose misconduct has proved him unfit to be entrusted with the duties and responsibilities belonging to the office of an attorney. * * * In the attainment of these objects, the idea of punishment has no appropriate place."

In re Lentz, 65 N. J. L., 134, 138.

And in a case especially appropriate the court, in the course of an elaborate opinion, announces this sound doctrine:

"When it is shown that the contract is based upon an adequate consideration from the attorney and no advantage has been taken of the client, and nothing done which would in any way result prejudicially to the client's interests, but that the entire transaction has been open and nothing withheld or concealed from him, and that he acted freely and with a full understanding of the probable consequences of his acts, such contracts, notwithstanding they
195 are looked upon with disfavor by the courts, have been upheld (citing cases). While the law implies constructive fraud on the part of the attorney in such cases, and places upon him the burden of proving the good faith of the transaction on his part, we do not understand that the presumption is ever carried to the extent of holding that the attorney is guilty of actual fraud, deceit, and unprofessional conduct because of the mere making of such a contract. Because a contract of this kind may be inequitable or against public policy, it does not necessarily follow that the attorney making it must be deemed guilty of gross unprofessional conduct. And before a court will proceed to punish summarily an attorney for a breach of professional duty of the character here complained of, it must first be shown, by evidence, other than the mere making of the contract, that the attorney acted dishonestly and with corrupt motives, and has wilfully misled and taken an unfair advantage of his client. In *Barker's case*, 49 N. H., 195, the accused, who was an attorney-at-law, was proceeded against for alleged unprofessional conduct, and the court, in the course of the opinion, tersely, and, as we think correctly, states the doctrine as follows: 'The true doctrine is expressed in *Bacon's Abr. Attorney H*, thus: Attorneys are officers of the court, and liable to be punished in a summary way, either by attachment, or by having their names stricken out of the roll of attorneys, for any ill practice attended with fraud and corruption, and committed against the obvious rule of justice and common honesty; but the court will not easily be prevailed on to proceed in this manner, if it appears that the matter complained of was rather owing to neglect or accident than design, or if the party injured has other remedy provided by act of Parliament or action at law; and this doctrine is recognized in *Bryant's case*, 24 N. H., 149. Tested by these rules, we think the court is not called upon to exercise its summary power in this case, for we think it is not clearly shown that fraud was practiced by the attorney to obtain payment of this bill.'

"Farther on, in the same opinion, the court observes: 'The court is fully impressed with the importance of its interposition to check

any fraudulent or corrupt practice by any officer of the court, and a member of a profession so highly honored and trusted, and which exercises such a vast influence in the affairs of men; but at
 196 the same time we feel that, in view of the very grave effects of exerting this power upon the professional standing and character of the person who may be subject to it, it ought to be exercised with great caution, and only when the court is fully satisfied that the fraudulent or corrupt conduct is proved. Such proof, we think, is not furnished in this case, and therefore the complaint must be dismissed.' "

In re Jones, 29 Utah, 333, 344-5; 81 Pac., 162.

The sound principles exemplified by the cases cited have been applied by this Department in cases similar to the one under consideration. Thus, in his altogether sound opinion in the case of E. H. Gelston, Secretary Teller held as follows:

"The right to practice before the several departments of the Government as agents of suitors is a right of which citizens cannot be deprived except on proof of their unfitness for such employment. It is a property right that cannot be destroyed by the exercise of arbitrary power on the part of the head of a Department. If it is alleged that such agent is not a proper person to appear before the Department, the rule requires that charges be formulated and presented to the agent, and if the agent does not make satisfactory explanations disbarment follows. The proceedings in cases of this character, in respect to the evidence required, are analogous to cases for the disbarment of attorneys in courts of law.

"The head of a Department cannot disbar an agent because he is ignorant or offensive to him, nor because his methods of conducting his business are not in accordance with the highest ethics of the legal profession, nor because he resorts to flaming advertisements describing his professional qualifications in the manner of the vendors of patent medicine nostrums. All these are matters of taste with which the Department has nothing to do. If the agent violates the statute he may be punished in the courts. If he defrauds the Government or attempts so to do, the head of the Department is authorized then to refuse to recognize him not only in the case in which his fraud was committed or attempted, but in any other. But this must be done on evidence and not on *ex parte* charges, to which the
 197 accused has not been allowed to respond. Property rights of this character cannot be destroyed except upon clear proof."

And, in the subsequent case of Walter H. and Norma W. Wills, the same able official thus disposed of an application for restoration to practice:

"These parties were disbarred from practice November 14, 1883, for the reason that in the advertisement of their business, by means of circulars, they had made false statements respecting the provisions of the pension laws and the practice of your office.

"They allege that the objectionable circulars were issued by them without any intention to deceive or defraud any one, and there seems to be sufficient reason to believe that the misstatements contained in

the circulars were made through misapprehension or ignorance, rather than with any fraudulent intent.

"They also state, and it appears true, that they had discontinued the use of circulars containing the misleading statements some time before the charges were brought against them, which fact was not clearly brought to my attention at the time of disbarment.

"It is, of course, to be desired that persons professing to represent claimants before your office should be intelligent and competent, but it does not seem to be practicable, under existing laws, to prescribe any standard of efficiency, nor would the Department be warranted in refusing to recognize an attorney for any degree of incapacity from want of intelligence, which would not manifestly result in absolute detriment to the interest of claimants and of the Government.

"The suspension or disbarment of an attorney, engaged in procuring pensions must necessarily delay the applicants in the work of presenting evidence to the office. Great injury may be done by dismissing an attorney and thus compelling thousands of applicants for pension to employ other attorneys who are not familiar with the condition of their cases, and who will, of course, exact an extra fee.

"The evidence in the present case shows that Wills & Co. either misapprehended the provisions of the pension laws, as construed by this Department, or that they did not exercise due care in preparation of their circulars, to properly set forth what the rights of
198 claimants are, under such laws; but in the absence of evidence of intent to defraud, and in view of their promise to conduct their business hereafter in a manner that will be satisfactory to the Department, I have concluded to rescind the order disbarring them, and they are hereby restored to practice."

There can be but one opinion touching the eminent soundness and justice of the departmental action in these cases; which, it is confidently believed, will be emulated in the case under presentation.

3. Passing to a consideration of the case upon its facts, and without regard to anything that is hereinbefore said as to the insufficiency of those facts to show any legal justification for any action against the respondents, it is confidently submitted that they equally fail to afford any moral justification for any such action, or for anything in the way of discipline of the respondents in the premises.

In the outset, it is worthy of note that the supposed case against the respondents was instituted by the Commissioner on his own initiative, and not at the instigation of any of the clients of the respondents, no one of whom has made any complaint in the premises. And, moreover, the citation named but fourteen of the thirty-eight cases considered, and, as to those fourteen, set forth certain alleged acts and indicated certain alleged facts supposed to support the charges made. As to these, and these only, the respondents were called upon to answer. Yet the report not only elaborates the charges of the citation, but also, in some instances, adds to them; and, as to all of them, the report sets forth new facts, so called, to which the respondents were never cited, which they have had no opportunity to meet, and the so-called testimony concerning which has already been considered. Upon every principle of both law and common fairness, the respondents are to be judged only upon the citation and

the answer thereto and the testimony submitted in support thereof; and, if so judged, the charges must, on the showing made, be dismissed as wholly unsustained.

199 But, whether the case be so considered or considered upon the whole record, it is yet impossible that the respondents can be found guilty of any conduct meriting condemnation to the extent even of reprimand, much less of suspension or disbarment from practice.

In their simplicity, the charges worthy of any consideration relate, quite exclusively, to the dealing by the respondents in land warrants which they were instrumental in procuring as agents or attorneys of the warrantees. As to this, the evidence, beyond all room for doubt, shows as follows:

(1) That the respondents fell into the practice as a natural and un contemplated incident to their business as agents or attorneys for the procurement of pensions, and that their dealing in the warrants was a mere outgrowth of that business, and such only, and had no relation whatever to any supposed "leak" in the Department, or the practice of certain attorneys obtaining data from the files, which the report mentions.

(2) That the practice itself, when the respondents so incidentally fell into it, was of fully thirty years' standing, without any rebuke, or even criticism, of the Department or Bureau, or any official whose business it was to rebuke it, if improper, and under conditions not only impossible to be unknown to the officials of the Department, but also actually known to them. The Commissioner's summary disposition of this undoubted fact cannot avail: he did not see fit to question the officials whose names were furnished by the respondents; and his reference to the order of his predecessor, that "a land warrant may not be delivered to the *claimant* until the attorneys shall have acknowledged the receipt of the fee for his services in the prosecution of the claim," is singularly maladroit, seeing that an order preventing the warrants from reaching the claimants could have no possible bearing upon the fact that they were being received by the attorneys.

200 (3) That the respondents were guilty of no misrepresentations to the claimants, or concealments from them, as to the value of the warrants. The only supposed testimony as to any misrepresentations consists of bald verbal statements by the claimants and others, which the respondents have had no opportunity to refute. Singularly enough, the Bureau, with all its machinery, zealously worked, has been unable to unearth a single letter of the respondents in which they state that the value offered or accepted by them for any warrant was "all that the warrant was worth." And the suggestion that the respondents concealed anything as to value is a mere inference, sought to be drawn from the simple statement by them of a price; and the plight in which the respondents would have placed themselves had they undertaken to put a value on the warrants is sufficiently and convincingly considered hereinbefore, (*Ante*, p. 41).

(4) That before the citation upon them—four months before—the respondents had, of their own volition, given up the practice of

dealing in warrants, for the sole reason that they had learned, and for the first time learned, of the Bureau's disapproval of the practice. The record as to the Pygall case shows this beyond peradventure, for there is the correspondence establishing the fact past all cavil.

(5) That, although under no legal obligation so to do, and although had they refused so to do the claimants would have been helpless in the courts, the respondents, of their own motion and before they knew of the disbarment of Moses, had resolved to give the claimants, whose warrants they bought, the financial advantage which those claimants would have obtained had they sold the warrants at the prices obtained by the respondents. This is the extreme measure of recompense which even a court of law exacts in cases in which it has any power to exact recompense, even of its officers, attorneys-at-law; no case can be found of an attorney's being disbarred under such circumstances.

200½ (6) That the action of the respondents in the premises was wholly free from the bad or corrupt motive which is absolutely essential to an unfavorable judgment of even attorneys-at-law in such transactions: as abundantly appears from their plain belief that they had a right to do as they did, and were wholly ignorant of any wrongdoing in the premises; from their correspondence with the claimants, candidly avowing that they were dealing in the warrants, not for the purpose of locating them, but for the purpose of speculation, thereby putting the claimants on notice that they, the respondents, were to receive for the warrants more than they were agreeing to pay for them; and from the utter absence of any covertness in method in dealing with the claimants, for had the respondents been conscious of any wrongdoing, or of any impropriety, however slight, their most natural course would have been to avoid their plain openness of conduct, and to have adopted instead subterfuges of whatever kind—of which many readily occur to the mind—whereby the fact that they were themselves becoming the purchasers of the warrants would have been sought to be concealed.

(7) That, both in their answer and in the memorandum submitting the evidence called for by the Commissioner, the respondents frankly avow that a nicer consideration and appreciation of their situation in dealing in the warrants would have prevented their falling into the practice in question, and that by its voluntary abandonment they have, so far as they are concerned, brought about the result declared by the Commissioner to be his aim, namely, the breaking up of that practice.

In conclusion, the grave consequences of the action recommended by the Commissioner are out of all proportion to the conduct of the respondents, however unfavorably viewed. Their exclusion from the right to practice before the Department of the Interior would apply, not only to the Pension Bureau, but also to the Patent and
200¾ Land Offices, in which the respondents have a large and valuable business; besides which it would of necessity be followed by their exclusion from the right to practice before any other Department of the Government. The effect of such action on the innocent members of the respondents' firm also need only be

stated to carry its own force against the recommendation; and, above all, the stigma which would be put upon the respondents by the proposed action is, in the light of all the facts, wholly uncalled for. The respondents are, and in all their relations of life always have been, men of repute and probity, occupying in the community in which they live positions of merited respect and influence. In ignorance of the adverse action in another case, already mentioned, and long in advance of the unprecedented publicity given to the Commissioner's recommendation before action upon it by the Secretary, which publicity of itself has had almost the effect of a temporary suspension from practice and in order to relieve themselves of the slightest appearance of being wanting in the strictest rectitude, they voluntarily, without any suggestion, hint, or intimation from any source whatsoever, divested themselves of all financial advantage derived by them in each and all of the transactions enumerated, including as well those not named in the citation as those named therein; so that, to apply *Lord Eldon's* test (6 Mod., 272), they completely disentangled themselves from the situation in which they were found, by reason of which disentanglement every benefit made by them resulted to their clients.

Tried by every standard, they have not been guilty of any conduct meriting the action recommended. On the contrary, by their frank acknowledgment of the inadvertence which led them into their position and their prompt and full reparation of that inadvertence, they not only have removed all just ground of criticism, but also have, indeed, qualified themselves to extort commendation, and to repel the condemnation and humiliation sought to be visited upon them.

201 Counsel cannot leave this matter without protest against the methods therein exemplified. The statute law of the land, which is but the legislative expression of the common law and of the most obvious rule of justice, requires that before a practitioner before the Department may be suspended or excluded from practice, he shall have notice of the charges against him and opportunity to be heard thereon. This means, as has been so repeatedly adjudged, that he shall have notice of charges which are not only in themselves within the Department's jurisdiction, but also so specific that he may have opportunity to meet them directly; and that, being thus duly and specifically notified, he shall have the right to be confronted by the testimony produced against him, and the opportunity not only to cross-examine the witnesses, but also to refute them by testimony produced in his own behalf. In the language of the adjudications, the common-law rules of evidence apply in such cases, and he is not to be tried upon affidavits, or depositions taken out of his presence, but is entitled to confront the witnesses and subject them to cross-examination, and to invoke the well-settled rules of evidence—all before the very judge who is to try him, and not before any one else to whom the right of hearing may be attempted to be delegated.

Matter of Eldridge, 82 N. Y., 161.

Matter of An Attorney, 83 N. Y., 164.

Matter of An Attorney, 86 N. Y., 565.

State *ex rel.* Fowler v. Finley, 30 Fla., 325.

In this case, every one of the principles thus applicable has been ignored. As above clearly shown, the supposed charges are not such as the statute contemplates, and so are not within the Department's jurisdiction; the charges, instead of being specific in respect of alleged offense, are loose, argumentative, and inferential; much the greater part—indeed, almost all— of the testimony is in direct disregard of the settled rules of evidence, the principles of which, in *Lord Erskine's familiar Language*, "are founded in the charities of religion, in the philosophy of nature, in the truths of history, and in the experience of common life." Such testimony as there is against the respondents was taken by special agents of the Bureau of Pensions, selected for that purpose, and was taken by those agents *ex parte*, in the absence of the respondents, without opportunity to them of cross-examination, and in a form and manner shocking to every instinct of propriety and fairness; the testimony so taken was submitted to the Commissioner, himself the prosecutor, who, not seeing the witness, could not, in lending or withholding credence to it, be governed by the same rules and reasons which, from an observance of the manner and deportment of the witnesses, are always so potent in influencing triers of fact; and upon such testimony, so taken and so considered, the Commissioner has reported his own view thereof and his recommendation in the light of that view; so that the respondents now stand before the only officer authorized to judge them, upon a record so made in disregard and defiance of every principle properly applicable to their case.

Respectfully submitted,

HENRY E. DAVIS,
For the Respondents.

203

EXHIBIT "E."

Filed June 1, 1908.

Before the Secretary of the Interior.

50621.

In the Matter of MILO B. STEVENS & COMPANY.

Application of Eugene E. Stevens and Thomas R. Harney, Doing Business under the Firm Name and Style of Milo B. Stevens & Company, for a Reconsideration of the Secretary's Action of May 1, 1908, Disbarring Them from Practice as Attorneys Before the Department of the Interior.

Comes now your respondents, above named, and respectfully request a rehearing or a reconsideration of the Secretary's action of May 1, 1908, in the premises, and that an order be passed setting aside said action and reinstating your respondents upon the rolls of attorneys in said Department, and as grounds for said application your respondents respectfully submit the following reasons or

grounds why said order of disbarment is erroneous and the punishment, in any event, excessive, unjust, and harsh, and as a further reason showing why the ends of justice would be satisfied if said respondents are permitted to continue to appear before the Department and act as attorneys:

1. That there has been no hearing in the case within the contemplation of law, and respondents have been deprived of their property rights without "due process of law." In support of this proposition we beg to call your attention to the following extract from the decision of Justice Morris in the Court of Appeals in the District of Columbia in the case of U. S. *ex rel.* Wedderburn *vs.* Bliss, 204 Secretary of the Interior, 12 D. C. Appeals, p. 485:

"That the relator's office of agent and attorney before the Patent Office and the Department of the Interior was a valuable right of which he should not be deprived without due process of law, such as would be applicable to his case, is not controverted. Nor is there controversy as to what, in general, would constitute due process of law in such cases as that to which the relator was summoned to respond. Specific charges, due notice of such charges, an opportunity to make specific answer to them, *an opportunity to cross-examine the witnesses in support of them*, an opportunity to adduce testimony in contradiction of them, an opportunity for argument upon the testimony and upon the law and the facts—and all this before the proper tribunal, competent to render judgment, and which does, in fact, render judgment—this undoubtedly constitutes due process of law under ordinary circumstances to its fullest extent."

Respondents had no opportunity to cross-examine any of the witnesses in support of the charges, whose testimony was taken *ex parte* by special examiners of the Pension Bureau, and the use of whom for such purpose appears without authority of law and was without notice to or the knowledge of the respondents.

2. That the proceedings herein were also in violation of the established rules and regulations of the Interior Department:

"Whenever an attorney or agent is charged with improper practices in connection with any matter before a bureau of this Department, the head of such bureau shall investigate the charge, *giving the attorney or agent due notice*, together with a statement of the charge against him, and allow him an opportunity to be heard in the premises. When the investigation shall have been con-

205 cluded all the papers shall be forwarded to the Department with a statement of the facts and such recommendations as to disbarment from practice as the head of the bureau may deem proper, for the consideration of the Secretary of the Interior." (See regulations, sec. 9, p. 184, of 1905, edition of pamphlet laws of U. S. governing granting of pensions and bounty land and the regulations governing recognition of attorneys relating thereto.)

Respondents had no "hearing" before the head of the Pension Bureau, as required by the regulations quoted, and under the act of Congress approved July 4, 1884, under which the Secretary of the Interior is authorized to act in proceedings for the disbarment of attorneys "for the word 'hearing' in law, and in this statute means

something more than oral argument. It means also the right to adduce testimony."

See *Wedderburn vs. Bliss*, *supra*.

Respondents had no "notice" of any kind of the investigation of the charges, as required by the regulations quoted. That the proceedings in this case were and have been, without any question, conducted in violation of the rules of law, and constitutional right granted to all citizens that no one shall be deprived of their property without due process of law, as we submit, has been done in the case of the respondents.

The above quotation from the *Wedderburn* case outlines specifically what is due process of law, and this follows the decision of several well known cases before the Supreme Court of the United States, and special attention is called to *Dartmouth College* case, reported in 4 *Wheaton*, U. S. p. 518, in which Mr. Webster said:

206 "By the law of the land is most clearly intended the general law; a law which hears before it condemns; which proceeds upon inquiry and renders judgment after trial. The meaning is that every citizen should hold his life, liberty, property, and immunities under the protection of the general laws which govern society. Everything which may pass in the form of an enactment is not, therefore, to be considered in the law of the land" (*Ibid.*, 252, 253.)

Citing a number of authorities, Cooley says:

"The words 'by the law of the land,' as used in the Constitution, do not mean a statute for the purpose of working the wrong. That construction would render the restriction absolutely nugatory and turn this part of the Constitution into mere nonsense. The people would be made to say to the two Houses: 'You shall be vested with the legislative power of the State, but no one shall be disfranchised or deprived of any of the rights or privileges of a citizen unless you pass a statute for that purpose. In other words, you shall not do wrong unless you choose to do it'" (*Ibid.*, 353).

It is otherwise defined as—

"a prosecution or suit instituted and conducted according to the prescribed forms and solemnities for ascertaining guilt and determining the title to property."

Taylor vs. Porter, 4 *Hill*, 140-141.

These authorities clearly show the rule of action that should have been followed, and the violation of which makes the proceedings before the Department complained of a nullity.

3. In view of the irregularity and illegality of the proceedings, the only evidence before the Department is the mere admissions of the respondents that they purchased the bounty land warrants, but denying any intention to deceive or mislead the clients, or that they acted in any manner in an unprofessional way.

207 4. In view of the representations made in the testimony filed respecting the knowledge and understanding among the Pension Bureau officials respecting the practice of attorneys, the respondents are entitled to a proper inquiry or investigation

into the truth of their assertions and an opportunity to participate therein, cross-examining witnesses and introducing witnesses, all of which opportunity has been denied your respondents. In view of the representations made respecting an analogous practice before the General Land Office with respect to certificates of soldiers' additional homestead rights and the unquestioned existence of such practice with full official knowledge and without official disapproval (see especially 20 L. D. p. 272, dated March 28, 1895) as follows:

"Mr. Rankin, who, it appears, was at the time of issuance of said certificate acting as attorney for Mr. Forgerson, purchased of said Forgerson the right of entry under the second certificate issued March 1, 1889."

And also copies of letters appended hereto and marked Exhibits "A" and "B" from the Commissioner of the General Land Office, dated, respectively, June 7, 1907, and July 31, 1907, addressed to Mr. D. N. Clark, Washington, D. C., showing that the office recognized and saw no impropriety in the practice of attorneys purchasing such rights, the attorneys being employed in respect to the procurement of the subject-matter purchased by them.

The respondents ought not to be subjected to what is, in effect, an *ex post facto* ruling condemning practice of prior existence. The constitutional prohibition against an *ex post facto* law must of necessity be regarded as equally applicable in connection with the rulings and decisions of an executive department.

Upon this point we invite your attention to the following quotation from your office decision of December 21, 1907, in the
208 late case of the appeal of Roy McDonald from the decision of the Commissioner of the General Land Office of August 15, 1907, said quotation being taken from a decision of the Supreme Court of the United States in *U. S. vs. McDaniel*, 7 Pet., 113, 114:

"... Hence, of necessity, usages have been established in every Department of the Government which have become a kind of common law and regulate the rights and duties of those who act within their respective limits. And no change of such usages can have a retroactive effect, but must be limited to the future."

5. The respondents in their answer averred that the practice was known to the officials of the Pension Bureau for years. This allegation was denied by the Bureau, and an *ex parte* inquiry was had as to the truth of the allegation. Respondents should have been allowed to cross-examine the Pension Bureau officials as to this fact which was material, inasmuch as the affidavits submitted on behalf of the respondents stated that the practice had been known to the officials of the Pension Bureau without question or without reprobation or comment in any way down to the time of the institution of the so-called investigation.

6. The respondents are entitled to the full benefit of the common law presumption of innocence in addition to the statutory presumption attaching to the fact of their admission and enrolment as attorneys under the requirements of section 5 of the act of July 4, 1884.

7. There is not in the case sufficient evidence, if indeed any evidence, to overcome the presumption of innocence. There is no evidence or suggestion of covertness in the transactions criticised, or any

hint of any attempt at subterfuge in the conduct of the same, as all the negotiations had with the claimants concerning the purchase of the bounty land warrants were done openly, directly with the
209 firm, purchased and paid for by the firm and not through any intermediary or dummy which could have readily been done by the respondents if they had intended to defraud or to purchase these land warrants through any improper motives and with the intention of defrauding claimants out of their rights. The matter of the purchase was, as they conceived it at the time, purely a speculation in which they conceived there was no wrong, and of their practice in doing which the Pension Bureau was fully advised by the circular in duplicate submitted to the Pension Bureau in May, 1903; for its approval in accordance with Rule 21 of that Bureau, for issuance to their clients and former clients, and to the former clients of Alexander M. Kenaday, deceased, whose successors they were, giving the Bureau ample notice that the respondents were engaged in this business in addition to procuring pensions. The practice of the respondents was not in any way questioned (see Law Division letter, June 3, 1903, with which was returned one copy of the proposed circular, the other copy being retained on file at the office of the Pension Bureau. A copy of said circular is attached hereto and marked "Exhibit C").

8. Further as showing respondents' good faith in the transactions and that they did not attempt to mislead the Department or deceive in any manner any one concerning their purchase of certain bounty land warrants, respondents, as early as December, 1906, and before being cited by the Pension Bureau, disclaimed to the law division of Pension Bureau any conscious impropriety or violation of any law, rule or regulation in connection with their dealing in bounty land warrants (see letter of December 18, 1906, to Commissioner of Pensions and filed in the law division).

That before the citation upon them—four months before—the respondents had, of their own volition, given up the practice of dealing in warrants, for the sole reason that they had learned, and
210 for the first time learned, of the Bureau's disapproval of the practice. The record as to the Pygall case shows this beyond peradventure, for there is the correspondence establishing the fact past all cavil.

9. As a further evidence of respondents' good faith and the absence of any intention to defraud or mislead on their part, your respondents, after being advised of the objections of the Pension Bureau to the practice existing among attorneys of purchasing bounty land warrants and in order to fully conform to the views entertained by the Bureau decided, after a full consideration, to divest themselves of all profits accruing to them from the transactions condemned by the Bureau, and on May 10, 1907, actually forwarded to the claimant vendors of the land warrants in question certified checks for the difference in each case between the purchase price and the selling price, less such fee for the procurement of the warrant as was properly allowable in each case. The decision of the respondents was reached without any knowledge or information whatsoever as to any action taken in the then pending disbarment proceedings in another

similar case, and the visit of counsel to the Department conveying their decision to the Secretary of the Interior secured for them their first information that action had been taken adversely in the other case and on a date (April 17) prior to that on which they had reached a decision (April 20). Counsel stated to the Secretary that both he and the respondents were in ignorance of the action taken and the Secretary accepted the statement of counsel on behalf of respondents.

Whatever official view respecting the motives or the knowledge upon which the respondents acted, the undisputed fact remains that the clients of the respondents have not suffered, but have rather been benefited since they could not have obtained for their land warrants

211 a price as high as that secured by the respondents through their personal acquaintance with scrip dealers and the confidence of such dealers in the respondents, and upon the guarantee by the respondents of the validity of the warrants.

10. It is respectfully submitted that the Secretary unconsciously erred in the order of May 1, 1908, when he said:

"That the said Eugene E. Stevens and Thomas R. Harney have transacted with their clients a business which is clearly incompatible with their obligations as attorneys and with the laws, rules, and regulations under which they were recognized and permitted to represent claimants before this Department and its bureaus."

Such a holding is not supported by the facts and the conclusion of law therein stated does not come within the purview of the act of July 4, 1884 under which the Secretary of the Interior had jurisdiction to proceed and there is no rule or regulation of the Pension Bureau of the Interior Department which provides that the purchase of said land warrants is unprofessional, improper or illegal, and there is no provision of the act or rules and regulations that is violated by the written charges filed against them by the Pension Bureau.

Sec. 5 of the act of July 4, 1884, is as follows:

"SEC. 5. That the Secretary of the Interior may prescribe rules and regulations governing the recognition of agents, attorneys, or other persons representing claimants before this Department, and may require such persons, agents, and attorneys, before being recognized as representatives of claimants, that they shall show that they are of good moral character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their claims, and such Secretary may, 212 after notice and opportunity for a hearing, suspend or exclude from further practice before his Department any such person, agent, or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations, or who shall with intent to defraud in any manner deceive, mislead, or threaten any claimant, or prospective claimant, by word, circular, letter, or by advertisement."

11. In view of the fact that it is clearly shown that no client or claimant has been injured in the least by the fact of the purchase of the various bounty land warrants, and that all profits accrued by reason of the sale, guarantee, and efforts of your respondents, have

been turned over to the claimants and the most that can be said of the entire transaction is that the respondents erred in their judgment as to the proprieties in such matters which appears to differ with the views entertained by the Department, therefore we respectfully submit the ends of justice can not be subserved by such extreme or excessive punishment now inflicted upon respondents by the aforesaid complained of order and as explanatory of the extent of the hardship done your respondents and showing the extent of their business they would state that they are the attorneys in about 65,000 claims and cases before the executive departments, of which number over 42,000 are before the Interior Department. Their income from fees during the four years during which they were engaged in the practice now condemned averaged over \$28,000 per year. To have entered into the practice openly and with a knowledge or belief that it was improper or subject to official reprehension, they must have been willing to jeopardize their established practice, the fruit of over forty years' effort, beginning with the late founder of the firm, father of the senior respondent, and sacrifice an assured income of comfortable proportions for a comparatively insignificant speculation of only

213 temporary character and from which they derived a gross profit of little more than \$6,800 during the four years it was carried on while the total derived from their claim business amounted to over \$112,000 during the same period. This is simply incredible.

12. The respondents are both persons of standing and good repute in the community, with various associations—business and otherwise—apart from their vocation as attorneys before the executive departments, and have, especially, a good reputation for honesty and fair dealing. Their social relations and good standing generally should properly be regarded as furnishing an additional ground for a disbelief that they knowingly and recklessly entered into any transactions they had any reason to suspect, from their knowledge and information concerning official practice, would, or might, subject them to the humiliation and disgrace of disbarment proceedings, all of which will appear by the petition filed with the Secretary bearing the signatures of many of the prominent business men of Washington, who have known the respondents personally for years, and also by the statements made to the Secretary personally on the 18th instant by the delegation that called upon him in that behalf of Mr. Charles J. Bell, president of the American Security and Trust Company; Mr. John Joy Edson, president of the Washington Loan and Trust Company; Mr. H. Bradley Davidson, President of the United States Trust Company; Mr. Cuno H. Rudolph, president of the Washington Board of Trade; Mr. A. M. Lothrop, of Woodward & Lothrop, who stated to the Secretary what they knew of the character and reputation of the respondents, and that they were above reproach, and, in their opinion, were incapable of knowingly committing any wrong or dishonest act.

13. It is further respectfully, but earnestly urged, and this suggestion is made to you not only as Secretary of a great Department of the Government, but also as a judge and lawyer sifting the charges made, and that the punishment meted out by you was unconsciously more severe than the case warrants. It not only destroys the business of the respondents, which is very large

and lucrative, but it is a stain upon their character which can never be removed, and a blot on the families of the respondents, besides being unjust and injurious to the widow of the late Milo B. Stevens, who is now the wife of the junior respondent, and his infant daughter, who are the innocent sufferers of the order of disbarment, as they are owners of a substantial interest in the business. These respondents have now been punished far more than the acts complained of warrant by the protracted period of uncertainty as to the result of the proceedings against them and by the publication broadcast of the news of their disbarment, and with persons not knowing the respondents their reputations have been greatly clouded if not wholly destroyed.

14. In conclusion it is earnestly submitted that for every reason advanced the petition of the respondents for a revocation of the order heretofore passed and a rehearing of the case should be granted. In no proper view of the matter can it be said that the respondents had that due process of law to which, according to every principle and authority, they were entitled, either in respect to the *ex parte* investigation of the charges by the Pension Bureau, or in the *ex parte* investigation of the facts set out and relied upon by the respondents, that they were following only a practice that had been engaged in to the knowledge of the Bureau without reprobation or comment down to the time of the filing of the charges against them. Again, that the respondents were wholly guiltless of any wrong intent in their transactions must abundantly appear from the openness and
215 method of their dealings, and this wholly without regard to their clearly established repute and character in the community in which they lived and in the business world. Moreover, that the punishment inflicted upon the respondents is wholly disproportionate to the offense charged against them would seem beyond successful question or even doubt, and as was said by Justice McComas, of the Court of Appeals of the District of Columbia, in 28 Appeals D. C., p. 524:

"The power to disbar ought always to be exercised with great caution and only in clear cases. * * * The case ought to be clear and free from doubt."

All the premises considered you are earnestly requested to reconsider your action and afford the respondents an opportunity to which they will avail themselves with all convenient promptness to satisfy you that they have not had in the case the clear right to which they were legally entitled; that the charges failed at their heart in that there is wholly wanting in the case the element of wrongful intent.

That in any view of the case the punishment inflicted is severe and unjust and that the respondents have in the history of the case and its public promulgation, and indeed, proclamation, already suffered a punishment far more than commensurate with the offense charged in which the worst possible view can be taken, all of which is respectfully submitted.

HENRY E. DAVIS,
WM. T. S. CURTIS,
RALPH P. BARNARD,
GUY H. JOHNSON,
Attorneys for Respondents.

216

"EXHIBIT A."

"R"

M. A. M.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

W. L. K.

WASHINGTON, D. C., June 7, 1907.

*Application for Reissue and Recertification of Certificate of Right
Rejected.*

Mr. D. N. Clark, Attorney at Law, Washington, D. C.

SIR: On November 5, 1906, you filed the application of Warren M. Holmes, administrator of the estate of William DeGoit, deceased, asking the office to reissue and recertify in the name of the heirs of said William DeGoit, a certificate of right which was issued on December 1, 1877, for eighty acres, in favor of said William DeGoit and transmitted to Gilmore & Co., who had applied for the issue of said certificate.

On November 23, 1906, you filed a certified copy of a petition of Eva DeGoit for the appointment of said administrator and of the letters issued pursuant to said petition.

On December 4, 1906, you filed an assignment of said claim by said administrator to you under an order of court and you requested that when said certificate is reissued and recertified, said action be taken in your favor.

Attached to said last named papers is an affidavit of said administrator, setting out that said DeGoit never gave any power of attorney to either locate or sell the certificate which was issued as above stated; that said paper is believed to be lost or destroyed and no benefit has been derived from the same by said William DeGoit, his widow or his heirs; that careful and repeated searches have been made among his papers and effects for said certificate, but
217 without success. Said administrator stated further that he made a personal search of all of Mr. DeGoit's papers and belongings and has been unable to find the certificate or anything pertaining thereto. This affidavit is corroborated by A. C. Garringer and O. Swanson, who claim an acquaintance with said administrator of fifteen or twenty years and state that they "have reason to know that the statements made by him are true."

You also attached your affidavit stating that you purchased said assignment from said administrator, the same being based upon original H. E. No. 6,366 made at Ionia, Mich., September 16, 1873, by said William De Goit, for the W. $\frac{1}{2}$ SW. $\frac{1}{4}$ Sec. 4, T. 20 N., R. 10 W., Michigan Mer., containing 80 acres, and upon the requisite military service in the army of the United States during the civil war; that you have never in any manner made any exercise, use, or disposition of said right, and are applying as assignee for the reissuance and recertification thereof; that you have made efforts in conjunction with said administrator and heirs to ascertain the location of said certificate but without success. You attached an envelope in which you state you inclosed a letter from Gilmore &

Company of this city, the attorneys who procured said certificate, and that the letter was returned by the postmaster marked "unclaimed;" that you do not know the whereabouts of Gilmore & Company, and that you verily believe that they have no — title or right of any kind in and to said certificate.

Said firm of Gilmore & Company were extensively engaged at that time in the purchase of soldiers' additional rights and having the same certified, under the practice then prevailing.

It appears to have been the uniform practice of said firm of attorneys and others, before applying for certification of the additional right, to procure two powers of attorney from the soldier—one
 218 *to locate the certificate when issued and the other to sell the land located thereby, which for a consideration was made irrevocable. To obviate the ruling then in force in the Department, that these additional rights are personal and not assignable, this practice of issuing two powers of attorney was resorted to. The power to locate was usually filed with the entry papers by which the location was made, but the power to sell which was the real instrument of transfer of the right, was retained by the locator, and it was usual to have the same recorded in the county in which the land located by the certificate was situated.*

There is no reason to suppose that the said firm deviated from their usual rule in obtaining permission from this soldier to have the right certified. They made this application with three others for various areas, and none of the four certificates appears from the records of this office to have been located. But this certificate, as well as the others, is still outstanding and unsatisfied.

The very fact that no trace of the certificate has been found by the administrator and his heirs, is corroborative of the supposition that said firm followed its usual course in this case and retained the certificate or disposed of it as its property acquired by virtue of a power of attorney to sell such as has been above described. The evidence of the loss of the certificate is negative in character and is not sufficient to warrant the reissue of the certificate. The mere fact of sending a letter by ordinary mail to a firm of attorneys who have not been in practice in this city for a number of years, and the filing of a letter showing its return unclaimed, is not strong evidence and the recent decision of your application as assignee of John C. Baker in which the Department on April 26, 1907, sustained the decision of this office requiring you to furnish evidence from the attorneys to whom the certificate was mailed, showing whether or not they
 219 *have or did have any interest in the certificate and if so an assignment of them to the applicant of the right, is applicable in this case. The fact that you have not found said attorneys does not relieve you of the burden of establishing your title to this right.*

Reference is had to the recent decision (R., file 31,431) *in re* Sharp, assignee of Fordney, in which you were attorney, wherein the Secretary stated:

"The burden is upon the party asserting it (the additional right)

to clearly establish not only the validity thereof but his title thereto, and until this duty has been fully performed the Department would be unwarranted in recognizing a claim based thereon."

As you have not presented satisfactory evidence of the loss of the certificate nor of your ownership thereof, your application for reissue and recertification is rejected subject to the right of appeal within sixty days from notice thereof.

Very respectfully,
(Signed)

FRED DENNETT,
Assistant Commissioner.

BOARD OF LAW REVIEW,
By JOHN McP. HAN.

M. L. H.

EXHIBIT "B."

R. GENERAL LAND OFFICE, W. L. K.
37738. WASHINGTON, D. C., *July 31, 1907.*

*Application for Reissue and Recertification of Additional Right
Held for Rejection.*

Mr. D. N. Clark, Attorney at Law, Washington, D. C.

SIR: By letter without date received here March 18, 1907, you filed the affidavit of Hiram Burt, of Arleta, Oregon, for re-
220 issue of the certificate of right for 8.15 acres, which was issued to him January 26, 1880, under the circular of March 17, 1877.

Mr. Burt made affidavit that he never made any other homestead entry than that on which the certificate was issued; that he had not in any manner previously used or exercised the additional right, and that he gave no power of attorney either to locate or to sell the same; that he remembers of having given authority, directly or indirectly to one W. C. Hill to make application for the certificate; that he never received the certificate, although he made repeated efforts to do so, and he does not know the whereabouts thereof, and verily believes the same to have been lost or destroyed.

With the application for this certificate Mr. W. C. Hill filed two others—that of Theodore J. Stage and Thomas P. Bailey—and the three certificates were mailed to said Hill by the same letter of January 26, 1880. The other two certificates have been located and that of Burt has not.

The certificate of Bailey was located on lot 6, sec. 2, T. 14 S., R. 38 E., Boise Mer., at Oxford, Idaho, under H. E. 169, F. C. 80, on April 24, 1880; that of Stage was located at Concordia, Kans., per H. E. 15834, F. C. 9440, April 15, 1880, on lot 8, sec. 25, T. 5 S., R. 3 W., 6th P. M., and patented November 10, 1882.

With each certificate is filed the soldier's affidavit of qualifications, that of Stage being executed in Sibley, Osceola County, Iowa, December 13, 1879, before the issue of the certificate and that of Bailey at the same place, also before the issue of the certificate.

The description of the original entry is written in the application for the additional entry and signed by the soldiers in the same shade of ink as that in the affidavit of qualifications above noted. The description of land entered is in a different shade of ink and in a different handwriting, as is also the name of the land office
 221 at the head of the affidavit and the date of the additional entry.

With the certificate of Stage is filed a power of attorney authorizing W. C. Hill to locate the additional right which was also executed on the 13th of December, 1879, presumably simultaneously with the other papers above referred to. The description of the land to be located, being that contained in the additional entry, is written in said power in a different handwriting and different shade of ink from the other portion of the power of attorney.

The foregoing leads to the presumption that said W. C. Hill in accordance with his usual practice and the general practice of dealers in this class of rights at that time, purchased these additional rights from the soldiers by means of two powers of attorneys, one to LOCATE the right and one to SELL the land located, before he applied for the issue of the certificates, and having located the two certificates, it is presumable that he also appropriated that of your client, Hiram Burt, in the same manner. The very fact that Mr. Burt is unable to find said certificate and never received it, as stated in his affidavit, is corroborative of said presumption.

Mr. F. W. McReynolds of this city, is the attorney for Mrs. Alice S. Hill, who is the widow and legal representative of W. C. Hill, deceased. Presumably Mr. McReynolds could furnish information as to the whereabouts of said certificate and the ownership thereof. If Hill was the owner of the certificate an assignment from Mrs. Hill to the soldier would be accepted as evidence of his ownership with a view to favorable consideration.

As neither the loss of the certificate nor the ownership thereof has been satisfactorily established, the application of Mr. Burt is
 222 held for rejection, subject to the right of appeal within sixty days from service of notice thereof. If, within said period, he presents evidence along the lines above suggested showing the ownership of the right, the application will be further considered.

Very respectfully,

FRED DENNETT,
 Assistant Commissioner.

"EXHIBIT C."

No. 227.

Pensions.

Indian Wars—Mexican War.

Survivors of the Indian Wars.—A service pension of eight dollars per month is due the survivors who were honorably discharged after

having served at least THIRTY DAYS in the following INDIAN WARS from 1817 to 1858:

The FLORIDA and GEORGIA SEMINOLE INDIAN WAR of 1817-18;

The FEVRE RIVER INDIAN WAR of Illinois of 1827;

The SAC and FOX INDIAN WAR of 1831;

The SABINE INDIAN DISTURBANCES of 1836-7;

The BLACK HAWK WAR, the CREEK WAR, the CHEROKEE DISTURBANCES, and the FLORIDA WAR with the SEMINOLE INDIANS from 1832 to 1842, inclusive;

The CAYUSE INDIAN WAR of 1847-8, on the PACIFIC COAST;

The FLORIDA WARS with the SEMINOLE INDIANS of 1842-58, inclusive.

223 The TEXAS and NEW MEXICO INDIAN WAR, of 1849 to 1856;

The CALIFORNIA INDIAN DISTURBANCES, of 1851-2;

The UTAH INDIAN DISTURBANCES, of 1850-3, inclusive;

The OREGON and WASHINGTON TERRITORY INDIAN WARS, of 1851 to 1856.

Widows also Entitled.—A service pension of EIGHT DOLLARS per month may be allowed to the lawful widow of any person who served at least THIRTY DAYS, as above. If the soldier, sailor, marine, etc., was a pensioner at the time of his death, the accrued pension due him at the time of his death may also be paid to his lawful widow; and if he left PENDING at the time of his death an application for SERVICE PENSION, his lawful widow may complete the case, and secure all the pension money due therein FROM THE DATE OF THE FILING OF HIS APPLICATION to the DATE OF HIS DEATH.

Reasons Why Congress Should Grant an Increase of Service Pension to the Survivors of the Indian Wars.—Very nearly all the survivors of the INDIAN WARS are now considered WHOLLY DISABLED FOR MANUAL LABOR, and many of them are ACTUALLY in a HELPLESS CONDITION. It is therefore due them that Congress should take some steps whereby the same benefits may be bestowed upon them as are now enjoyed by the survivors of the Mexican War.

The act of JANUARY 5, 1893, provided an increase of the SERVICE PENSION of certain MEXICAN WAR SURVIVORS to \$12 per month, provided the pensioner could prove that he was WHOLLY DISABLED for manual labor, and was in such DESTITUTE CIRCUMSTANCES

224 that \$8 per month were insufficient to provide him with the necessities of life. THOUSANDS HAD THEIR PENSIONS INCREASED UNDER THIS ACT. But later, on March 3, 1903, Congress further provided that the SERVICE PENSION of certain MEXICAN WAR SURVIVORS should be \$12 per month, WITHOUT REFERENCE TO THEIR FINANCIAL OR PHYSICAL CONDITION. Therefore the service pension of all Mexican War survivors is now \$12 per month. There is, however, no provision of law under which survivors of the Indian wars can have their SERVICE PENSION INCREASED, notwithstanding, as before stated, very nearly all of them are now considered WHOLLY DISABLED FOR MANUAL LABOR, and many of them are so HELPLESS AS TO REQUIRE THE AID AND ATTENTION OF ANOTHER PERSON.

It is hoped and believed that during the next Congress the service pension of the survivors of the INDIAN WARS will be INCREASED TO

\$12 PER MONTH, thus according them the same benefits already given to the survivors of the MEXICAN WAR.

We Want the Addresses of

1. ALL SURVIVORS of the INDIAN WARS who served between 1790 and 1858, who are now receiving a SERVICE PENSION of \$8 per month, or who are receiving NO PENSION.

2. Widows who are now pensioned at \$8 per month, or who are receiving NO PENSION, and whose husbands served in any of the INDIAN WARS between 1790 and 1858.

Mexican War Pensions.

Back Pension Money.—Mexican War survivors who are NOW DRAWING a service pension of \$12 per month under the act of Congress of JANUARY 5, 1893, may be entitled, under a recent 225 decision of the Department, to a re-rating, whereby the \$12 rate will date back SEVERAL YEARS, and possibly as FAR BACK AS JANUARY 5, 1893, the date of the act.

We have secured for our MEXICAN WAR CLIENTS, within the past one year, THOUSANDS OF DOLLARS by way of BACK PENSION MONEY. Mexican War survivors who have had their service pension increased to \$12 per month under the recent act of Congress of March 3, 1903, have still the RIGHT to FILE AN APPLICATION, and also to PROSECUTE ANY APPLICATION ALREADY FILED, for whatever BACK PENSION MONEY may be due them under the act of JANUARY 5, 1893.

Remember that the filing of an application for BACK PENSION, or the prosecution of such an application, ALREADY FILED, will in NO MANNER interfere with the pensioner drawing his regular pension.

Widows Should Read Carefully.—If the pensioner filed an application for increase during his lifetime, and died before it was ALLOWED, his widow may now have the claim reopened to recover an increased rate of pension to which he may have been entitled. In some cases considerable BACK PENSION MONEY is found due and payable.

If the pensioner, at the time of his death, was in receipt of a service pension of \$12 per month, under the act of JANUARY 5, 1893, there may be due some BACK PENSION MONEY, which can now be secured for his lawful widow.

We Want the Addresses of

1. ALL SURVIVORS of the MEXICAN WAR who are now drawing a service pension of \$12 per month under the act of JANUARY 5, 1893.

226 2. WIDOWS whose husbands at the time of death were drawing a SERVICE PENSION of \$12 per month under the act of JANUARY 5, 1893.

3. WIDOWS whose husbands, during their lifetime, drew a SERVICE PENSION of only \$8 per month, and who had applied for an increase, but who died before the increase was allowed.

4. WIDOWS who are now pensioned at \$8 per month, or who are receiving NO PENSION, and whose husbands served in the MEXICAN WAR.

5. ALL SURVIVORS of the MEXICAN WAR whose pensions have been

increased to \$12 per month under the recent act of Congress of March 3, 1903.

Attorneys' Fees in Pension Claims.—No FEE unless successful. The law governs the amount and the date of the payment of attorney's fees in all classes of pension claims, and in no claim is the fee due and payable unless and until the claim is ALLOWED, and then the GOVERNMENT WILL PAY THE FEE out of the pension money secured, and send the balance to the pensioner direct.

Congressional News.—We will send, from time to time, FREE OF CHARGE, to all MEXICAN WAR SURVIVORS, and also to the survivors of the INDIAN WARS, including the widows of those who have died, or may hereafter die, whose names and addresses are sent us, circulars giving full information as to any NEW LAWS which may be passed by Congress affecting the rights of such soldiers and sailors and their widows.

Military Bounty-Land Warrants.

We will buy and pay spot cash for all perfect assignments of *Military Bounty-Land Warrants*. No delay in adjustment.

We will pay not less than ten dollars to any person who will assist us in securing the assignment of a bounty-land warrant. If you know of any one who has a BOUNTY-LAND WARRANT, or who is entitled to one, write us at once.

227

Those Who Are Entitled.

A military bounty-land warrant of 160 acres is due all persons who served at least fourteen days, or who were actually engaged in a battle in any of the wars in which the United States was engaged from the year 1790 to March 3, 1855, if they have not already received it. This includes those who served in the following wars:

In any of the INDIAN WARS prior to March 3, 1855;

In the MEXICAN WAR;

In the WAR OF 1812.

If a warrant was issued for 40, 80, or 120 acres only, ANOTHER or ADDITIONAL WARRANT to aggregate 160 acres can now be secured. There are no doubt hundreds of persons who are entitled to a land warrant of from 40 to 160 acres, and ESPECIALLY IS THIS TRUE OF THOSE WHO SERVED IN THE VARIOUS INDIAN WARS PRIOR TO MARCH 3, 1855.

Warrants Lost or Destroyed.

If a warrant was actually issued, and was afterwards lost or destroyed, a DUPLICATE WARRANT can, under certain conditions, be obtained. ADVICE FREE.

Certain Heirs at Law May be Entitled.

There are certain heirs at law of the persons to whom a warrant or an additional warrant was due, who may also be entitled. CORRESPONDENCE SOLICITED.

Disloyalty No Longer a Bar to Right to Land Warrant.

The question of LOYALTY or DISLOYALTY to the United States during the war of the rebellion no longer affects the right to bounty-

land warrants, if the person applying is otherwise entitled.
 228 (Act of Congress of March 11, 1898.) It is thought that
 there are many persons who served during the INDIAN and
 MEXICAN WARS who have failed to receive bounty-land warrants
 because of DISLOYALTY.

Outstanding and Unlocated-Bounty-Land Warrants.

There are over TWO MILLION ACRES OF OUTSTANDING UNUSED BOUNTY-LAND WARRANTS, although they were regularly issued to the persons entitled thereto. Doubtless many of these warrants have been lost or destroyed, but duplicates thereof can be obtained. On the other hand, a large number of them are no doubt in the possession of the heirs at law of the persons to whom the warrants were issued or assigned. These warrants can now be sold by the heirs at law or legal representatives of the persons to whom they belonged. We will gladly advise, FREE OF CHARGE, any persons having such warrant. We will buy, FOR CASH, all such warrants.

Correspondence solicited with the following persons:

1. Those entitled, but WHO HAVE NEVER OBTAINED A BOUNTY-LAND WARRANT.
2. Those who have secured a bounty-land warrant FOR LESS THAN 160 ACRES.
3. Those who have secured a bounty-land warrant, but the same WAS AFTERWARDS LOST OR DESTROYED.
4. Those whose relatives secured a bounty-land warrant, but the same HAS BEEN LOST OR DESTROYED.
5. *Those who now have in their possession Bounty-Land Warrants no matter to whom the same were issued.*

229

Advice Free.

Soldiers and Sailors of the War of the Rebellion or their heirs at law are not entitled to Land Warrants.

Read Carefully.—"All records and papers pertaining to the pension business of Mr. Alexander M. Kenaday, deceased, formerly Secretary of the National Association of Veterans of the Mexican War, and all files and correspondence relating to the cases heretofore in his charge, are now in the possession of Milo B. Stevens & Co., his claims business having been transferred to them."—(Extract from letter of May 19, 1897, from Mary L. Kenaday, widow of Alexander M. Kenaday.)

Main Office: 817 14th Street N. W., Washington, D. C.

Branches: 163 Randolph St., Chicago, Ill.

231 The Arcade, Cleveland, O.

Whitney Opera House Block, Detroit, Mich.

MILO B. STEVENS & CO.,

Att'ys, (Established 1864), Claims, Pensions, Patents, Lands, Successors of George E. Lemon, Deceased; Alexander M. Kenaday, Deceased; William E. Preston, Deceased, and Many Others.

230

Rule to Show Cause.

Filed June 1, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50621.

THE UNITED STATES OF AMERICA upon the Relation of EUGENE E. STEVENS, THOMAS R. HARNEY, MARTHA R. HARNEY, and EVELYN STEVENS, by MARTHA G. HARNEY, Her Guardian, Relators,

vs.

JAMES R. GARFIELD, Secretary of the Interior of the United States,
Respondent.

Upon consideration of the relators' petition in the above entitled cause, it is this 1st day of June, A. D. 1908,

Ordered, That the respondent show cause on or before the 8th day of June instant, at the opening of the Court, or as soon thereafter as counsel can be heard, why the prayers of the said petition should not be granted,

Provided, That a copy of the said petition and of this order be served upon the said respondent on or before the 2nd day of June, instant.

WRIGHT, *Justice.**Marshal's Return.*

Served copy of within order and copy of the petition in this cause on within named James R. Garfield Secretary of the Interior.

June 1, 1908.

AULICK PALMER, *Marshal.*
S.

231

Demurrer.

Filed June 11, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50621.

THE UNITED STATES OF AMERICA upon the Relation of EUGENE E. STEVENS, THOMAS R. HARNEY, MARTHA G. HARNEY, and EVELYN STEVENS, by MARTHA G. HARNEY, Her Guardian, Relators,

vs.

JAMES R. GARFIELD, Secretary of the Interior of the United States,
Respondent.

Come now the Relators, by their attorneys, and demur to the answer of the Respondent in the above entitled cause, and say that the same is bad in substance.

HENRY E. DAVIS,
WM. T. S. CURTIS,
BARNARD & JOHNSON,
Attorneys for Relators.

NOTE.—Among the points of law to be argued in support of the foregoing demurrer are the following:

1st. The said answer fails to show that the action of the respondent in and by the same set forth was within the purview or under the authority of the certain Act of Congress of July 4th, 1884, therein mentioned, or the rules or regulations, or any of them, of the Department of the Interior purporting to have been established and promulgated under the said Act.

2nd. The certain evidence or testimony in the said answer set forth and alleged to have been taken under and in conformity with the provisions of Section 4744 of the Revised Statutes of the United States was without authority of law, in that the provisions of the said Section as amended refer exclusively to examinations in to the merits of pension or bounty land claims, and fraud in the presentation or procurement of allowance of the same, and have no application to the subject matter of the alleged or pretended charges against the Relators in the petition set forth.

3rd. The said pretended testimony or evidence does not appear by the said answer to have been taken upon notice to the Relators or any of them, and it does not in and by the said answer appear that the Relators or any of them were confronted, or had opportunity to be confronted, by the witnesses professed to have given such testimony or evidence, or that the relators or any of them either cross-examined, or had opportunity to cross-examine, the said witnesses or any of them.

4th. The said answer shows that no sufficient competent or legal testimony or evidence was taken or offered in support of the supposed or pretended charges against the relators in their petition mentioned.

5th. The said answer fails to show that the Relators or any of them were afforded due process of law in the proceedings in the petition and the said answer set forth and alleged.

6th. It appears from the allegations of the petition and of the answer of the respondent thereto that the Relators were found guilty, if of any offense, of an offense or act with which they were never charged, and which they were never cited to meet or answer, namely, "having transacted with their clients a business which is clearly incompatible with their obligations as attorneys and with the laws and rules and regulations under which they were recognized and permitted to represent claimants before this (the Interior) Department;" which, said finding is, moreover, without the purview of the said Act of July 4th 1884, which said Act confers the sole and exclusive jurisdiction and authority of the Respondent in the premises.

7th. For other good and sufficient grounds of demurrer apparent on the face of the said answer.

234

Opinion.

Filed June 19, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50621.

THE UNITED STATES *ex Relatone* EUGENE E. STEVENS, THOMAS R. HARNEY, MARTHA R. HARNEY, and EVELYN STEVENS, by MARTHA G. HARNEY, Her Guardian, Relators,

vs.

JAMES R. GARFIELD, Secretary of the Interior of the United States,
Respondent.

In this case the pleadings present the same question which has controlled in the decision of No. 50618. But it is contended as averred by the answer that—

“Eugene E. Stevens and Thomas R. Harney — withheld from the Department the information of the membership of the said firm of Milo B. Stevens & Co. which they now set out in the petition filed herein and having on the contrary deliberately represented to the Department that the said firm was not composed of the members set out in the said petition, said Eugene E. Stevens and Thomas R. Harney, trading under the firm name of Milo B. Stevens & Co., have not complied with the rules under the said Act of July 4, 1884, for the admission of attorneys and the rules governing their continuance as such in the practice before the said Department, and accordingly the said Eugene E. Stevens and Thomas R. Harney have no right, title
235 or status to ask of this Court the writ of mandamus to restore them to the position which they acquired by fraud and in violation of the rules of said Department.”

The inevitable answer to this contention, as it seems to me, is this; that if the relators are to be excluded from the right to practice before the Department to which they have concededly been regularly admitted, excluded on account of fraudulently procuring that admission, it can be done only after they have been charged with this fraud and their guilt of it established after a “hearing” according to the established law of the land and according to “due process of law.”

The demurrer is sustained for the reason expressed in No. 50618.

W.

Amended Answer.

Filed June 23, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50621.

THE UNITED STATES *ex Relatione* EUGENE E. STEVENS, THOMAS R. HARNEY, MARTHA R. HARNEY, and EVELYN STEVENS, by MARTHA G. HARNEY, Her Guardian, Relators,

vs.

JAMES R. GARFIELD, Secretary of the Interior of the United States,
Respondent.

This respondent, now and at all times hereafter saving and reserving unto himself all benefit and exception to the imperfections, uncertainties and defects of the said petition, and saving to himself the benefit of the lack of jurisdiction appearing on the face of said petition, either in this Court to grant the relief prayed therein or in the relator to seek it, and the benefit of the lack of status of relator to pray the relief therein asked, and the benefit of the lack of jurisdiction in this Court to review, modify, or annul the action of the Secretary of the Interior taken within his jurisdiction in the decision of a matter in his control, relying thereon the same as if a demurrer

had been specifically interposed, for answer unto the said
237 petition or so much as is material, says:

That the order of disbarment of May 1, 1908, is, by its terms, against Milo B. Stevens & Co. and against Eugene E. Stevens and Thomas R. Harney, of Washington, in the District of Columbia, who have, since December 2, 1896, been practicing before the Department of the Interior and certain of its bureaus and offices under the firm name of Milo B. Stevens & Co.

Rule 5 of the regulations prescribed by the Secretary of the Interior under authority conferred upon him by section 5 of the Act of July 4, 1884, to prescribe rules and regulations governing the recognition of agents, attorneys and other persons representing claimants before his Department, reads as follows:

"5. In the case of a firm the names of the individuals composing the firm must be given, and a certificate and oath as to each member of the firm will be required."

Under this rule it has been the practice to decline to recognize a firm as the attorneys or agents in the prosecution of any claim or matter before the Department of the Interior unless each member of said firm has been duly admitted to practice and is in good standing.

After the death of Milo B. Stevens, of Cleveland, Ohio, during the year 1896, and upon the motion of Eugene E. Stevens as the sole surviving member of the firm of Milo B. Stevens & Co., and upon the statement of the said Eugene E. Stevens and Thomas R. Harney

that the said Eugene E. Stevens and the said Thomas R. Harney had formed a copartnership, they were permitted to practice before the Department of the Interior under the firm name of Milo B. Stevens & Co., by virtue of an order issued by the Assistant Secretary of the Interior on June 24, 1897, which reads as follows:

“Messrs. Eugene E. Stevens and Thomas R. Harney, will be allowed to practice before your office under the firm name of Milo B. Stevens & Company provided that they procure from the personal or legal representatives of the late Milo B. Stevens, a statement, duly acknowledged, to the effect that no objection is had to the use of the name of Milo B. Stevens in the new firm and that such paper be filed with the Department and a copy thereof filed in the Pension Office; and provided further, that Eugene E. Stevens and Thomas R. Harney shall not take into partnership with them any new person or parties to practice under the firm name of Milo B. Stevens & Company, and, that, upon the death of both parties the business carried on under the firm name of Milo B. Stevens & Company shall cease; and also provided, that the said Eugene E. Stevens & Thomas R. Harney shall file with the Department, and a copy thereof in the Pension Office, a joint statement duly authenticated, accepting the terms and privileges hereby accorded.”

Said Eugene E. Stevens and Thomas R. Harney having filed the affidavit of the widow of the said Milo B. Stevens, on the 8th day of July, 1897, accepted said rule and expressed their purpose and intention to observe each and all of the stipulations therein set forth, that no other person should be admitted to practice as a member of said firm.

The said Martha G. Harney was the widow of the said Milo B. Stevens and became the wife of the said Thomas R. Harney on the 19th day of October, 1898; and the said Evelyn Stevens, a minor child, is the daughter of the said Milo B. Stevens. As neither the said Martha G. Harney nor the said Evelyn Stevens has been ad-

mitted to practice before the Department of the Interior as individuals or members of the firm of Milo B. Stevens & Co., they were not disbarred from practice by the order of May 1, 1908, and had no status to join in the petition for a mandamus in connection with said order.

Paragraphs 2 and 3.

He admits the averments in the second and third paragraphs of the petition.

Paragraph 4.

He admits the averment in the fourth paragraph, that Eugene E. Stevens and Thomas R. Harney have been co-partners under the firm name and style of Milo B. Stevens & Co. since December 2, 1896, but denies that Martha G. Stevens, now Harney, and Evelyn Stevens have been recognized as attorneys or as members of said firm by the Department of the Interior.

Paragraph 5.

He admits the averment in the fifth paragraph that neither Martha G. Harney nor Evelyn Stevens has been formally admitted to practice before the Department of the Interior but that the relators, Eugene E. Stevens and Thomas R. Harney, were duly admitted to practice before said Department, but denies the allegation therein contained that the said Eugene E. Stevens and the said Thomas R. Harney have, with the knowledge of the officials of said Department, in their own behalf or in behalf of the relators Martha G. Harney and Evelyn Stevens, as co-partners, since the 2nd day of December, 1896, carried on the business as aforesaid or that said Martha

240 G. Harney or the said Evelyn Stevens have at any time been recognized by the Department of the Interior as members of the firm of Milo B. Stevens & Co., or that the rules and regulations relative to the admission to practice before the Department of the Interior would permit of the recognition of an infant of tender years as an attorney or agent before said Department or permit the recognition of any firm as such unless each and every member thereof is in good standing as a practitioner before said Department.

Paragraphs 6, 7, 8, 9, 10 and 11.

He admits the averments in the sixth, seventh, eighth, ninth, tenth and eleventh paragraphs.

Paragraph 12.

Answering the twelfth paragraph of said petition, respondent says that he denies the averment thereof that the practice of the purchase by attorneys and practitioners before the Department of the Interior of purchasing bounty land warrants from their clients is or was within the full knowledge of the officials of the said Department and had been known to them for many years and suffered and permitted without reprobation or condemnation whatsoever, and denies that the same had become and was known as a common-law custom or usage in the prosecution of such business and in the practice in such class of cases.

The respondent denies the averment of said paragraph that the relators relied in part in defense to the charges in the citation upon the claim that the practice with which they were charged
241 was well known, as aforesaid, to the officials of the Department of the Interior and was sort of a common-law custom or usage, because he says that such a claim is not a competent or a legal defense and was not considered by the Secretary of the Interior in any wise as a defense to the acts charged in the citation and which the relators admitted in their answers and in the evidence they produced to have been committed by them. The said Secretary of the Interior, while not deeming the said claim of relators to be a legal defense, yet at the suggestion of the relators that examination be made of certain of the officers of the Pension Bureau, and in order to inform himself of the truth or falsity of the so-called claim and as to whether any officials of the Department of the Interior or any

of its bureaus were cognizant of such practice or connived at the offense, directed an inquiry after the submission of the case, in the course whereof certain depositions were taken of officials in the Bureau of Pensions, from which it appeared that the officers of the Bureau of Pensions whose duties were connected with the adjudication of military bounty land warrant claims had no knowledge of the existence of the alleged practice of permitting attorneys to acquire such warrants, which they had procured to be issued, for the purpose of selling them at a profit. Under the circumstances of the case it was not believed necessary to give notice to relators of the time

and place of the taking of these depositions, and, in point of
242 fact, no such notice was given. When the officials of the

Bureau of Pensions learned by the investigation which preceded the disbarment proceedings against the relators, Eugene E. Stevens and Thomas R. Harney, and certain other attorneys, that certain attorneys had, by false statements and concealments of facts, procured the assignment of certain such claims from their clients for inadequate considerations and had then sold the same at a large profit, immediate action was taken against the persons so shown to have violated the provisions of the act of July 4, 1884, and the rules and regulations of the Department and the confidence reposed in them by their clients.

Respondent denies absolutely that the officials of the Department of the Interior and of the Bureau of Pensions knowingly permitted to pass without reprobation or condemnation any such practice, but on the contrary the said officials immediately proceeded to apply the proper remedy when it was discovered that such offenses were being committed. The citation issued against the relators, Eugene E. Stevens and Thomas R. Harney, and which is the basis of the entire proceedings and the accusation the relators were called upon to answer, did not charge merely the purchasing by the relators, Eugene E. Stevens and Thomas R. Harney, of warrants which they had been employed by their clients to procure, and actually did procure to be issued by the Pension Office, but the acquisition by

these attorneys of the said warrants at an inadequate price
242½ and the sale of the same thereafter at a greatly advanced price. Thus, in the Hickman case, set out in the said citation, the relators, after persuasion, inducement and continued insistence, succeeded, with the aid of their agent, in procuring Mrs. Hickman to accept \$75 for the warrant, and this warrant the relators, Eugene E. Stevens and Thomas R. Harney, thereafter sold for \$680, thus turning over to their client about eleven per cent. of the bounty the law provided for her.

The so-called claim advanced as aforesaid and as claimed by the relators, Eugene E. Stevens and Thomas R. Harney, in part defense, was merely as to a practice of attorneys purchasing warrants which they had procured to be issued for their clients. This claim, even if true, would be no legal defense to the charge, but, as it appears, the claim was not as broad as the charge and made no contention that there was ever a practice known of attorneys purchasing clients' warrants at *inadequate* prices.

Further answering this twelfth paragraph, respondent denies the averments thereof as the same are set out in terms, to the effect that "Upon the *ex parte* investigation and report of certain subordinate officials of said Department, and without opportunity to the relators, or any of them, to participate in such an investigation or to support, by the production of witnesses, their allegations in the premises, the respondent decided the contention of the relators in that behalf ad-

243 versely to them, and in part reached and rested his conclusion and decision in the premises upon the assumption and pretended adjudication that such practice did not exist and had not existed," etc., and the other averments down to the end of the paragraph, respondent says that the same is untrue, and is denied as pleaded. It is not true, and it is denied, that upon this "*ex parte*" investigation the respondent decided the contention of the relators in that behalf adversely to them. The fact and truth is that the respondent entertained the opinion, and so decided, that the claim of the relator, even if true, was without merit as a sufficient defense to the charge. Respondent denies that in resting his final conclusion and decision to disbar the relators he based or reached his conclusion upon the "assumption and pretended adjudication that such practice did not exist and had not existed."

Respondent denies the averments of the paragraph that "in respect of such material contention in that behalf the relators were deprived of due process of law and the opportunity to make good their defense in respect of their contention." Respondent denies that such contention was material, or, as above set forth, was a competent or a legal defense of the charge of which they stood accused.

Respondent denies that they were subjected to punishment for an *ex post facto* offense, because of the fact that the acts with which they were charged, which they admitted in their answer to the citation to have been committed by them, were done by them after the passage of the act of July 4, 1884, and such acts were violations of the said law.

244 Further answering said paragraph, respondent says that the relators, Eugene E. Stevens and Thomas R. Harney, were charged in the citation with specific acts of misconduct therein set out fully in detail. They were given thirty days to answer the said citation in any wise and with whatever assistance or evidence they deemed fit. They answered the said citations and they admitted having the transactions with their clients set out in the said citation and admitted having done the specific things therein charged, but denied that by reason thereof they were guilty of any offense. With their answer they submitted certain evidence in their behalf. This evidence consisted, among other things, of receipts which they had procured from their clients of the sums of money they were charged in the citation with having improperly procured for themselves by the illegal transactions with their clients, which said sums they had repaid to their clients after the institution of these proceedings against the relators. The said receipts show the repayment by the relators, Eugene E. Stevens and Thomas R. Harney, after the institution of these disbarment proceedings, of large sums of

money, varying from fifty to six hundred per cent. of the amounts they had originally given their clients. The difference they had retained for their own profit, and the burden and claim of their answers was that after they were charged they had made restitution. The relators also offered some other testimony and evidence in their behalf as to character and the like. On this record it was not
245 necessary to produce any witnesses to prove the facts, which the relators admitted in their answers and in the evidence offered in support of their answers. It became solely a question whether, on the admitted facts, the charges were sustained, and whether the relators had violated the provisions of the act of July 4, 1884, and the laws, rules and regulations governing the practice of attorneys before the Department of the Interior. They were allowed to make all the argument they desired on this matter and any other feature of the case, and they availed themselves of such privilege and had their hearing, in which they appeared personally and were represented by counsel.

Paragraph 13.

He admits that the relators had a large and lucrative practice before the Department of the Interior and had pending a large number of applications for pensions and for patents, the exact number of which is to the respondent unknown, but the respondent denies that if the said order of disbarment of the said relators, Eugene E. Stevens and Thomas R. Harney, is allowed to be and remain effective and final that that fact will deprive the said relators, Eugene E. Stevens and Thomas R. Harney, of many thousands of dollars in such applications for pension, for the reason that on the 29th day of May, 1908, prior to the signing and filing of the petition of the said relators, Eugene E. Stevens and Thomas R. Harney, in the Supreme Court for the District of Columbia on the 1st day of June, 1908, the said relators, Eugene E. Stevens and
246 Thomas R. Harney, sold and assigned for a valuable consideration all of their right, title and interest in all of said applications for pension to Bommhardt & Co., of Cleveland, Ohio, Washington, District of Columbia, Chicago, Illinois, and Detroit, Michigan, as shown by a copy of the original assignment (Exhibit No. 27), and as shown by the statement of John A. Bommhardt, Frank D. Fawcett, and Harry G. Batchelor, comprising the said firm of Bommhardt & Co., dated on the 1st day of June, 1908 (Exhibit No. 28).

He admits that the effect of the said order of disbarment, if said order be not set aside, will be to debar the relators, Eugene E. Stevens and Thomas R. Harney, from further practice before the said Department of the Interior and its bureaus and offices, but denies that in event that said order remains in full force and effect it will utterly destroy the business of said Eugene E. Stevens and Thomas R. Harney in the claims for pension mentioned in the petition for the reason that all their right, title and interest to fees in connection with said claims was by said relators, Eugene E. Stevens and Thomas

R. Harney, sold and assigned to said firm of Bommhardt & Co., as above set forth, before this petition was filed.

Paragraph 14.

He admits that neither the relator Martha G. Harney nor the relator Evelyn Stevens was cited or summoned to appear to the charges aforesaid, or any of them, and denies that either the said

247 Martha G. Harney or the said Evelyn Stevens was admitted to practice before the Department of the Interior or that said

Department has in any way attempted to assert jurisdiction over them as attorneys, agents or other persons admitted to prosecute claims before said Department; that the act of July 4, 1884, confers upon the Secretary of the Interior, *inter alia*, the duty of prescribing rules and regulations governing the practice of attorneys, agents and other persons to represent claimants before his said Department, and Rule 5, so prescribed by the Secretary of the Interior, requires that in the case of a firm the names of the individuals composing the firm must be given and a certificate and oath as to each member will be required, and that the practice of said Department under said rule has been and is to decline to recognize any firm unless each member thereof is a practitioner in good standing before said Department. If, as is alleged by the relators, the firm of Milo B. Stevens & Co., has, since the 2nd day of December, 1896, been composed of the relators as co-partners, and has been practicing as attorneys or agents before the Department of the Interior and the bureaus and offices thereof, the said partners, representing said firm, have fraudulently practiced before said Department and its bureaus and offices by concealing the fact that two of the members of said firm of Milo B. Stevens & Co. had not been admitted to practice before said Department, this without the knowledge, authorization or consent of said Department, and that by reason of the premises aforesaid, the said firm of Milo B. Stevens & Co.

248 has not, since the 2nd day of December, 1896, if it has since that date been constituted as alleged in the petition, been entitled to recognition in any claim for pension or bounty land and has no status in law to seek of this court a writ of mandamus to compel its restoration to the rolls of authorized attorneys or agents of said Department.

And further answering said fourteenth paragraph of the petition with respect that none of the relators was afforded or allowed an opportunity to be confronted with any of the witnesses produced in support of said charges or to cross-examine said witnesses or to refute their testimony by testimony produced in opposition to the testimony of such witnesses, respondent says that the same is untrue, and absolutely denies the same. Respondent says it would be impossible that the relators were denied the right to cross-examine witnesses produced in support of the said charges, because the fact is that no witnesses were produced, as the relators admitted all of the acts set out in said citation, as more fully above set forth. Accordingly there was no denial of the right of confrontation of witnesses, and

respondent denies that relators were not allowed to refute their testimony by testimony produced in opposition, so far as the legal effect of said averment is concerned, but says that as a matter of fact there was no testimony of witnesses offered to be refuted by testimony of the relators, but that the relators did offer all the
249 evidence they desired to answer the charges in the citation.

In order to fully inform the court, respondent says that prior to the issuance of the citation, and before the relators were charged with anything, and before it was known that they would be charged with anything, the Commissioner of Pensions caused a general investigation, which had no known relation to these relators, concerning the improper practices connected with the prosecution of military bounty land warrant claims before the Department of the Interior. In the course of this investigation depositions were taken in the field, in the course of which it developed, among other improper practices, that certain attorneys were trafficking with their clients by procuring the assignment by their clients of the land warrants the attorneys had procured for them at grossly inadequate prices and selling the same at their market value, thus reaping for themselves a large profit. This investigation was made only for the purpose of informing the Commissioner of Pensions as to the conditions obtaining in his Bureau, and at the time of the institution of the investigation, or during the continuance of the same, it was not, and could not be known whether the relators, or anybody else, would be charged with any offense as the result thereof or whether the investigation would disclose sufficient ground to charge them with anything at all. After the investigation was concluded, and it was found by the Commissioner of Pensions that there was reason-

able ground to charge the relators, Eugene E. Stevens and
250 Thomas R. Harney, with certain improper practices, the said Commissioner of Pensions issued his citation, in which citation were embodied the specific acts which the said relators were called upon to answer. This citation became the basis of the proceedings, and was the only accusation made against them. Prior to this time the said relators were not under a legal charge which they were compelled to answer. Under these circumstances, no notice was given relators of the taking of said depositions. When they were charged by the issue and service of the citation they then made their response, admitting the purchase by them of warrants, as alleged in the citation; but denying any wrongful intent, purpose, or knowledge in so doing, and denying their liability in law to the charges contained in the citation and the sufficiency of the said charges and the jurisdiction of the Secretary of the Interior to entertain the same. Upon receipt of the said response of the relators the said Commissioner of Pensions acknowledged the same and notified counsel for the relators, on May 22, 1907, that the matter would be held in abeyance for a period of ten days to allow the relators to file such evidence as they might possess and might desire to offer in support of the allegations contained in their response. The said period of ten days was verbally extended at the request of said counsel, because of court engagements, and, on June 12, 1907, no

testimony having been filed in behalf of the relators in support of their response, as aforesaid, the said Commissioner of Pensions, and upon full consideration of the said response and the whole record, including the aforesaid depositions, so as aforesaid taken before the said citation, in the proper exercise of his discretion, reached the conclusion that the said relators had committed acts which warranted and required their disbarment, and, on the said last mentioned day, the said Commissioner of Pensions recommended to the Secretary of the Interior that the said relators be disbarred, and notified the said relators and their counsel accordingly. Upon receipt by the said relators and their counsel of such notification, said counsel represented to the said Commissioner of Pensions that he, counsel, had understood and believed that the extension of the said period of ten days was intended to cover, and would cover, the period to be occupied by counsel in court, to wit, until the close of a pending trial, and, upon such representation, the said Commissioner consented that counsel should be allowed until and including the 24th day of June, 1907, to submit the evidence referred to; and, on the said 24th day of June, counsel for the relators submitted evidence in the form of a memorandum and various affidavits in supposed support of the response of the said relators and a statement, accompanied by receipts of their clients, showing a repayment by the relators, after service of the citation herein, to their said clients of the sum of \$6841.95, representing the difference between the aggregate amount received by the relators from the sale of the said warrants, and that paid by the relators to their clients for the same. Thereafter, having fully reconsidered the case, including the additional evidence which the relators desired to and did submit, and having reached the conclusion that the additional evidence offered by said relators only confirmed his previous finding, the said Commissioner of Pensions returned his recommendation for disbarment to the Secretary of the Interior, reaffirming his former recommendation. Thereafter the Secretary of the Interior granted the said relators, Eugene E. Stevens and Thomas R. Harney, full hearings and opportunities to be heard. At these said hearings they appeared in person and had the benefit of the assistance and arguments of counsel, and while objection was made in the hearing before the Secretary of the Interior that the depositions upon which the citations were issued were taken without opportunity of the reviewing officers to notice the demeanor of the deponents and without opportunity of the relators to cross-examine them, yet the real contention of the relators was that the acts charged and admitted by them did not fall within the law and the jurisdiction of the Secretary of the Interior to make the same the basis of an order for disbarment; that even if the Secretary of the Interior should decide that the offenses charged and admitted were within the Act of 1884 and were of sufficient gravity to disbar them, that they had made restitution to their clients of the sum of \$6841.95 by repaying the moneys they had improperly obtained from twenty-two of their clients, and that for this and other reasons no severe punishment should be imposed but that clemency should be shown, as is fully exemplified from the following,

taken from the brief of counsel for the relators filed before the Secretary of the Interior, on page 95 of which it is stated:

"Tried by every standard, they have not been guilty of any conduct meriting the action recommended. On the contrary, by their frank acknowledgment of the inadvertence which led them into their position and their prompt and full reparation of that inadvertence, they not only have removed all just ground of criticism, but also have, indeed, qualified themselves to extort commendation, and to repel the condemnation and humiliation sought to be visited upon them."

Respondent therefore denies every allegation in this paragraph and in the entire petition that the relators, Eugene E. Stevens and Thomas R. Harney were denied a hearing and an opportunity to be confronted with the witnesses produced to support the charges or to cross-examine the same or to refute their testimony by testimony produced in opposition thereto; that said proceedings as above set forth were not entirely regular, and any averment in the petition to the contrary is emphatically denied. The said proceedings are set out in full Exhibits No. 1 to No. 29, inclusive, filed with the original answer, and which are incorporated herewith and made a part of this answer and to be read as part hereof the same as if they were set out within the covers of this answer.

In further answer to the said fourteenth paragraph and the petition as a whole, respondent says that he is advised that the averments that the charges in the said citation are not within the contemplation of the act and are argumentative and inferential
254 and relate to matters of law, and that he is not obliged to make answer thereunto.

He denies that the so-called testimony "relied upon in support of the charges is and was in direct disregard of the settled rules of evidence," because, as above set forth, it was not claimed that witnesses testified orally in support of said charges. The citation set out with great particularity the facts which the relators were called upon to answer, and specifically set out and referred to the facts deemed important in the charge, and also set out certain documentary evidence in the form of letters and extracts from letters written by the relators to their clients, which letters and extracts from letters had been procured through the taking of the depositions as aforesaid before the issuing of the citation. The citation also referred, specifically, to the original warrants bearing the endorsements of the clients of the relators and of the said relators themselves, which were on file in the public records of the Department. The answer of the relators did not deny the dealing by them in the warrants, as charged, although it raised the question as to the legal import of their acts in the premises, and denied any guilty intent or knowledge in the performance of such acts. In their original response, the relators set forth a copy of a letter written by them to one of their clients, and, in reply to the suggestion of the Commissioner that they should submit such evidence as they might possess and might desire to offer in support of the allegations of

their response, the relators submitted certain exhibits in the
255 form of memoranda made from their files, an exhibit showing
the amounts received and refunded by them in each case,
and certain letters passing between themselves and certain of their
clients, including a letter sent to each of their clients to whom they
made refundment; and certain affidavits, six in number. It is
accordingly denied that the substantiation of the charges in the
citation was made in violation of the settled rules of evidence.

Respondent admits that the relators were never confronted by the
persons, or any of them, whose depositions were taken prior to the
issuance of the citation, but he avers that there were no witnesses
adduced to testify orally in support of the citation after its issuance,
and, therefore, no such witnesses with whom the relator could claim
the right to be confronted, or whom they could claim the right to
cross-examine.

And, with respect to the remaining averments of the said four-
teenth paragraph, the respondent says that the same import matters
of law, and he submits them to the court.

But nevertheless, for answer unto the same so far as it is material,
respondent says that the said Secretary of the Interior, in the con-
sideration of the case, after reviewing the questions of law raised
thereby, found and decided that the said relators, Eugene E. Stevens
and Thomas R. Harney, during the time that their relations as
attorneys to their said clients had subsisted, had been engaged
256 in a traffic by procuring the assignment to them by their
clients of the very land warrants their clients had employed
them to procure, for a grossly inadequate consideration, and subse-
quently sold the same at the market price, thereby gaining an un-
conscionably large profit; that in violation of the act of July 4,
1884, the said Eugene E. Stevens and Thomas R. Harney had, by
word and by letter, circular and advertisement, with intent to de-
fraud, misled and deceive their clients with respect to the actual
value of the same and with respect to the market and the chances
of disposing of the same, and thus had been guilty of the acts set
out in the said citation by means of which such defrauding, mis-
leading and deception of their clients had taken place; that Eugene
E. Stevens and Thomas R. Harney, in violation and evasion of
Section 2436, Revised Statutes of the United States, before and
during the time of their presentation of the claims of their clients
for bounty land warrants and at the time of procuring the same,
attempted to and succeeded in obtaining compensation in excess of
that agreed upon between the said Eugene E. Stevens and Thomas
R. Harney and their clients, indirectly and through the subterfuge
of procuring the assignments aforesaid at grossly inadequate prices,
and thus obtaining for themselves compensation consisting of the
original fee agreed upon and the profit they reaped in the sale of
the land warrants at their market value thereafter. And the said
Secretary of the Interior, in the discharge of his duty and
257 in supervising the execution of the pension and bounty land
laws of the United States and the protection of the pensioners
and warrantees from oppression, found that the acts and practices

of the said Eugene E. Stevens and Thomas R. Harney had violated the provisions of the act of July 4, 1884, and the rules and regulations promulgated thereunder and were inconsistent with the character of service contemplated by the said laws to be rendered by attorneys admitted thereunder in order to furnish to their said clients competent and valuable services, and found and decided, as aforesaid, that such services were not valuable to the said clients, but destructive of, and hostile to, their interests. By reason of the premises the said Secretary found and decided that the relators, Eugene E. Stevens and Thomas R. Harney, being guilty of the charges in the citation, should be excluded and disbarred from practice before the Department, as provided for in said act. Accordingly, he issued the order of disbarment and served the same upon the relators, Eugene E. Stevens and Thomas R. Harney.

The respondent is advised, and therefore respectfully suggests, that the act of the said Secretary of the Interior in issuing the said disbarment order on the 1st day of May, 1908, was not a ministerial act, but an act requiring the exercise of his discretion in complying with the provisions of the act of July 4, 1884, conferring upon the Secretary of the Interior the authority to make rules and regulations

258 for the regulation of the practice of attorneys, agents and other persons to represent claimants before said Department, and, after notice and opportunity for a hearing, to suspend or exclude from further practice before his Department any such person, agent or attorney shown to be incompetent, disreputable, or who refuses to comply with the said rules and regulations or who shall, with intent to defraud, in any manner deceive, mislead, or threaten any claimant or prospective claimant by word, circular, letter, or by advertisement.

And respondent further suggests to the Court that the said relators, Eugene E. Stevens and Thomas R. Harney, having withheld from the Department the information of the membership of the said firm of Milo B. Stevens & Co. which they now set out in the petition filed herein, and having, on the contrary, deliberately represented to the Department that the said firm was not composed of the members set out in the said petition, the said Eugene E. Stevens and Thomas R. Harney, trading under the firm name of Milo B. Stevens & Co., have not complied with the rules prescribed under the said act of July 4, 1884, for the admission of attorneys and the rules governing their continuance as such in the practice before the said Department, and accordingly the said Eugene E. Stevens and Thomas R. Harney have no right, title, or status to ask of this court the writ of mandamus to restore them to a position which they acquired by fraud and in violation of the rules of said Department.

259 And your respondent, having fully answered, prays that the petition may be dismissed, the rule discharged, and the writ denied.

FRANK PIERCE.

DISTRICT OF COLUMBIA, ss:

Frank Pierce, being duly sworn, says that he is the First Assistant Secretary of the Interior, and, in the absence of James R. Garfield, Secretary of the Interior, from the city on government business, is the present Acting Secretary of the Interior, and because thereof makes this answer; that he has read over the foregoing answer to the rule issued herein to show cause why the writ of mandamus should not be allowed and that he knows the contents thereof; and that the matters and facts therein stated from his personal knowledge he knows to be true and those stated upon information and belief he believes to be true.

FRANK PIERCE.

Sworn to and subscribed before me this 23rd day of June, 1908.

[SEAL.]

W. BERTRAND ACKER,
Notary Public in and for D. C.

260

RESPONDENT'S EXHIBIT No. 1.

Filed June 9, 1908.

WASHINGTON, D. C., *November 30, 1896.*

To the Hon. Secretary of the Interior.

SIR: I have the honor to make application for admission to practice as agent for claimants before the Department of the Interior and its several bureaus.

My full name is Thomas Reardon Harney, and my address is #1419 F Street, N. W., Washington, D. C.

I have never been a recognized attorney or agent before the Department or any Bureau thereof.

I do not hold any office of trust or profit under the Government of the United States.

I enclose herewith my oath of allegiance in accordance with section 3478, R. S. U. S.

I also enclose a certificate from a Judge of a United States Court, duly authenticated under the seal of the Court, as to my moral character; good repute, qualifications, etc., as required by the regulations of the Department of the Interior.

Respectfully submitted,

[SEAL.]

THOMAS R. HARNEY.

261

RESPONDENT'S EXHIBIT No. 2.

Filed June 9, 1908.

(1-281.)

(Attorney's Oath.)

Oath.

SECTION 3478. Any person prosecuting claims, either as attorney or on his own account, before any of the Departments or Bureaus of the United States, shall be required to take the oath of allegiance, and to support the Constitution of the United States, as required of persons in the civil service.—Revised Statutes U. S.

I, Thomas Reardon Harney, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely without any mental reservation or purpose of evasion; so help me God.

THOMAS R. HARNEY,

(Give P. O. address in full:) #1419 F Street N. W., Washington, D. C.

Sworn to and subscribed before me this 30th day of November, A. D. 1896.

[SEAL.]

LOUIS BEYER, JR.

262

RESPONDENT'S EXHIBIT No. 3.

Filed June 9, 1908.

In the Supreme Court of the District of Columbia, November 30, 1896.

Upon information received, and upon which I rely, I hereby certify that Thomas Reardon Harney is a person of good moral character and in good repute, and is possessed of the necessary qualifications to enable him to render claimants before the Department of the Interior and its several Bureaus, valuable service, and is otherwise competent to advise and assist them in the presentation of their claims.

A. C. BRADLEY,

Associate Justice Supreme Court, D. C.

Test:

J. R. YOUNG; *Clk*, &c.,By R. J. MEIGS, JR., *Ass't Clk*.

[SEAL.]

Filed June 1, 1908.

Office of Milo B. Stevens & Company, Attorneys & Solicitors, Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Late of 14th Ohio Battery; Eugene E. Stevens, Attorney-at-Law; Thomas R. Harney, Late of U. S. Pension Bureau.

WASHINGTON, *June 12, 1897.*

Hon. Commissioner of Pensions.

SIR: Referring to the matter of the continued recognition of Mr. Eugene E. Stevens and Mr. Thomas R. Harney as Milo B. Stevens & Co., we beg leave to submit:

1. That Mr. Milo B. Stevens, of the firm of Milo B. Stevens & Co., attorneys before the Bureau, having died on November 23, 1896, the surviving partner, Eugene E. Stevens, the son of the deceased, thereupon formed a co-partnership with Thomas R. Harney, under the name of Milo B. Stevens & Co., for the prosecution of pension and other claims before the Executive Departments.

2. That Eugene E. Stevens has been an attorney before the Department since about April 1882, when he became a member of the firm of Milo B. Stevens & Co., the firm thereafter consisting of his father, Milo B. Stevens, as aforesaid, and himself; and Thomas R. Harney has been an attorney before the Department since on or about November 30, 1896, and his partnership interest in the new firm of Milo B. Stevens & Co. dates from November 23, 1896.

3. That many thousands of dollars have been expended by Eugene E. Stevens and by the new firm in advertising the name "Milo B. Stevens & Co." which has become well and favorably known to the general public and especially to that portion having pension or other claims to be prosecuted against the General Government. No substituted name and no successorship would carry to the new firm the same amount of good will and professional reputation as that conveyed by the continuation of the old firm name by the new firm. This belief is not uncommon, as is shown by the multitude of instances in which well established firm names in various business and professional lines have been retained by new firms composed wholly or in part of surviving members of the old. The Department has recognized what is here contended for by the action taken in the matter of N. W. Wills & Co., (N. W. Wills—Mrs. Norma W. Wills—
264 Jones, and the continued recognition in new business of herself and Sarah I. Wright as N. W. Wills & Co. is accorded).

4. That Eugene E. Stevens as a member of the old firm of Milo B. Stevens & Co. was as much a part of "Milo B. Stevens & Co." as Milo B. Stevens, and in the absence of objection or protest on the part of a person having a right to injunction against his use of the

name "Milo B. Stevens," might, it is believed, continue as Milo B. Stevens & Co. This has been conceded by the official action according recognition of the surviving partners of George Bancroft & Co., R. McAllister & Co., and Wm. B. Greene & Co., under the respective firm names.

5. That Eugene E. Stevens and Thomas R. Harney have, it is believed, a legal right to use as a firm name "Milo B. Stevens & Co.," in the absence of objection or protest on the part of a person having a right to injunction against their use of the name "Milo B. Stevens" or "Milo B. Stevens & Co." This has been virtually conceded by the official action in the matter of N. W. Wills & Co., *supra*, there being in that case now no member of the firm whose legal name is N. W. Wills or Wills.

6. That the Bureau has heretofore been duly informed as to the personnel of the new firm practicing as Milo B. Stevens & Co., and the clients of the new firm are advised by the firm's letter-head that Milo B. Stevens is deceased.

7. That it being known who constitute the present firm of Milo B. Stevens & Co., before the Bureau and Department, and there being no charge of deception or misrepresentation, and no objection or protest on the part of any person having a right to injunction against the use of the new firm of the old firm name, it is believed that the right of Eugene E. Stevens and Thomas R. Harney to recognition before the Department and Pension Bureau as Milo B. Stevens & Co. should be conceded.

8. That it is believed that upon every consideration the new firm is entitled to recognition as Milo B. Stevens & Co. and should be so recognized; such recognition not being unlawful in any respect, or contrary to sound public policy, and being within the vested discretionary power of the Hon. Commissioner, subject to the approval of the Hon. Secretary of the Interior.

9. That a refusal to so recognize the firm would, it is believed, serve no public purpose, but would cause serious damage and injury to the new firm, and to Mr. Stevens as surviving member of the old firm.

265 10. That we had no notice whatsoever as to the practice or requirements of the Department or of the Bureau as stated, until under date of April 2, 1897, we were informed through the Law Division of the Bureau that "the use of the firm name of Milo B. Stevens & Company is improper, under the rules of practice before this Bureau, unless by permission of the Honorable Secretary of the Interior;" and the death of Milo B. Stevens had then been a matter of record in the Bureau for as long as four months.

Very respectfully,
(Signed)

MILO B. STEVENS & CO.

Filed June 9, 1908.

Copy.

H. J. O. R.

DEPARTMENT OF THE INTERIOR,
BUREAU OF PENSIONS,
WASHINGTON, *June* 16, 1897.

The Honorable the Secretary of the Interior.

SIR: I have the honor to transmit herewith a letter dated June 12, 1897, signed by Milo B. Stevens & Co., of Washington, D. C., relative to the continuance of the business of Milo B. Stevens & Company under the name of Milo B. Stevens & Company.

The old firm was composed of Milo B. Stevens and Eugene E. Stevens. The senior partner has died, and it is the desire of the parties interested to admit Thomas R. Harney into the firm and continue business under the name of Milo B. Stevens & Co. I see no objection to this arrangement, and therefore recommend that Messrs. Eugene E. Stevens and Thomas R. Harney be allowed to practice under the firm name of Milo B. Stevens & Co., provided that they obtain from the personal or legal representatives of the late Milo B. Stevens a statement, duly acknowledged, to the effect that no objection is had to the use of the name Milo B. Stevens in the new firm, and that such paper be filed in this Bureau; and provided further that Eugene E. Stevens and Thomas R. Harney are not to take into copartnership with them any new parties to practice under the name of Milo B. Stevens & Co., and that, upon the death of both parties, the business carried on under this firm name shall cease.

The papers are forwarded for your consideration and action.

Very respectfully,
(Signed)

J. L. DAVENPORT,
Acting Commissioner.

(Endorsement.)

DEPARTMENT OF THE INTERIOR, *June* 19, 1897.

Respectfully returned to the Commissioner of Pensions with the remark, that the Department has no objection to the recognition of Mr. Eugene E. Stevens under the firm name of Milo B. Stevens & Co., he being the surviving member thereof and having a property right in the use of the firm name.

When, however, Mr. Stevens enters into copartnership with Mr. Harney not for the transaction of business under their own proper names as the successors of Milo B. Stevens & Co., but with a view to doing business under the firm name of Milo B. Stevens & Co., it cannot be permitted.

Mr. Harney never was a member of the firm of Milo B. Stevens & Co. during its life, and to allow him in connection with Mr. Stevens to do business under the title of Milo B. Stevens & Co., would be to permit him to transact business as far as *he* is concerned, under a fanciful name.

Attorneys and agents admitted to practice before the Department and its Bureaus are not allowed to transact business under false, fanciful, or fictitious names or titles.

The adverse action in this case, is in accordance with the practice of the Department, and no good reason is shown why it should be departed from in this instance.

WEBSTER DAVIS,
Assistant Secretary.

268 RESPONDENT'S EXHIBIT No. 6.

Filed June 9, 1908.

Law Division.

H. M. E. B.

DEPARTMENT OF THE INTERIOR,
BUREAU OF PENSIONS,
WASHINGTON, D. C., *July 7, 1897.*

Hon. Webster Davis, Assistant Secretary of the Interior, Washington, D. C.

SIR: In compliance with instructions contained in your letter of the 24th ultimo, relative to the firm of Milo B. Stevens & Company, I have the honor to return herewith for the files of the Interior Department a letter from Thomas R. Harney, dated June 22, 1897, an affidavit of Mr. Harney dated June 22, 1897, and a printed notice to the clients of certain changes in the personnel of the firm of Milo B. Stevens & Company.

Very respectfully,

H. CLAY EVANS,
Commissioner.

269 RESPONDENT'S EXHIBIT No. 7.

Filed June 9, 1908.

Office of Milo B. Stevens & Company, Attorneys and Solicitors,
Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Late of 14th Ohio Battery; Eugene E. Stevens, Attorney-at-Law; Thomas R. Harney, Late of U. S. Pension Bureau.

T. R. H.

E. F. C.

WASHINGTON, *June 22, 1897.*

Hon. Webster Davis, Assistant Secretary of the Interior.

SIR: Referring to the matter of the request of Mr. Eugene E. Stevens and myself for continued recognition as Milo B. Stevens

& Co., transmitted to the Department by the Hon. Commissioner of Pensions with a favorable recommendation, but adversely considered by the Department on the 19th inst., I have the honor to invite further consideration of the legality of the action sought and especially to the equities involved.

I understand it to be conceded that Eugene E. Stevens, surviving partner of the old firm of Milo B. Stevens & Co., may properly continue to file new business as Milo B. Stevens & Co., in accordance with the established practice of the Department as shown by the official action in various instances cited to us through the Law Division of the Pension Bureau.

I understand also that it would not be in accordance with precedent to permit my recognition as of Milo B. Stevens & Co., or as a partner of Eugene E. Stevens, save under a firm style other than "Milo B. Stevens & Co." and approved by the Department.

270 I believe that the legality of the adoption and use, by Eugene E. Stevens and myself, of the firm name of Milo B. Stevens & Co., will be unquestioned, apart from any rule or practice of the Department, and I submit whether what is thus lawful and sanctioned by common business practice should not be so recognized and regarded by the Department in the absence of any conflicting provision in the law governing the admission and recognition of attorneys before the Department. I believe that the gist and substance of the question involved rests here, and it appearing that the Department is advised as to the names of the attorneys seeking recognition under a specified firm name or style, and it appearing that they are in good standing, and it appearing furthermore that there is no attempted deception of claimants involved, I believe that no objection ought to be raised by the Department which may properly come only from persons having the right to enjoin against the use of the firm name or style adopted.

As regards an objection raised, as I understand, to the continued use by Eugene E. Stevens and myself, in practice before the Department, of the firm name of Milo B. Stevens & Co., that such firm style is, in the view of the Department, purely fanciful, owing to the non-existence of "Milo B. Stevens", the deceased member of the old firm of Milo B. Stevens & Co., I beg to invite attention to the action of the Department in the matter of one Plumb, or Plum, practicing as Plumb & Co., or Plum & Co., which action was taken, I believe, in about November, 1888, by the late Hon. Assistant Secretary, Mr. D. L. Hawkins.

The equities affecting myself are, I believe, fully set out in the accompanying affidavit, of which I beg to ask your consideration.

I believe that it is not until recent years that the Department has assumed any jurisdiction, such as is now declared, in the matter of prescribing or regulating the form or style of the firm name of attorneys duly admitted and in good standing before the Department. The only official expression to be found in any of the formulated rules and regulations for the admission, recognition and practice of attorneys before the Department Pension Bureau, that
271 has any relation to the question here involved, is found in the

"Regulations" issued by the late Hon. Secretary, Mr. L. Q. C. Lamar, under date of February 1, 1886, published in the official edition of September, 1896, of the "Laws of the United States governing the Granting of Army and Navy Pensions, together with the Regulations relating thereto. Compiled in the Law Division of the Bureau of Pensions, and published in accordance with the Provisions of Section 4748 of the Revised Statutes." See page 114 thereof, first paragraph:

"In the case of a firm, the names of the individuals composing the firm must be given, and a certificate and oath as to each member of the firm will be required."

(Eugene E. Stevens has been an attorney before the Department since about April, 1882, and after the admission of myself to practice before the Department, the Bureau of Pensions and the Patent Office were duly notified of my interest as a member of the firm of Milo B. Stevens & Co. with Eugene E. Stevens.)

There being entire absence in any of the various official publications of rulings and decisions, as well as in the official rules and regulations, of any reference to or citation of the official actions relied upon as precedent in the concession of the right to recognition of Eugene E. Stevens as Milo B. Stevens & Co., or as precedent in the refusal to recognize myself as of Milo B. Stevens & Co. or as a partner with Eugene E. Stevens under the firm name or style of Milo B. Stevens & Co., I was without notice of the stated practice of the Department, nor am I chargeable, I believe, with constructive notice of such practice in the absence of due publication.

In the case of Bostwick (Lockwood, attorney), reported at page 96, volume 8 of Pension Decisions, (leaflet No. 52), the Department declared that—

272 "an attorney is not chargeable with neglect for the reason that he has not complied with an order, requiring additional evidence to establish a *prima facie* case, when the publicity given to the order is insufficient for presuming that attorneys have been notified of its contents,"

thus recognizing the equitable principle here contended for. The Department said further,

"while it is true that attorneys are presumed to know the requirements of the tribunal before which they practice, it is equally true that long established rules of practice are presumed to continue in force.

I am of the opinion that change in the practice * * * should be made by written orders, and widespread publicity be given them, and that in the absence of such publication, attorneys are not presumed to be cognizant of any change in the practice."

I submit that the Department ought not, under the circumstances of the case, to interpose new as an objection to the granting of the request approved by the Hon. Commissioner of Pensions a rule or practice of which no due notice has been had.

Very respectfully,

THOMAS R. HARNEY.

Filed June 9, 1908.

DISTRICT OF COLUMBIA, *City of Washington*, ss:

Personally appeared before me, a Notary Public in and for the District aforesaid, Thomas R. Harney, of Washington, D. C., who being duly sworn declares as follows:

That he is the Thomas R. Harney who was enrolled as an attorney before the Department of the Interior, and the several bureaux thereof, on or about November 30, 1896;

That on the same date, to wit, November 30, 1896, he consummated the purchase, for the sum of Six Thousand Dollars (\$6000), of an interest in the business of Milo B. Stevens & Co., attorneys before the Executive Departments, having on November 28, 1896, formed with Eugene E. Stevens, the surviving partner of the old firm of Milo B. Stevens & Co., a partnership for the continuance of the business of the old firm, and for the conduct of new business before the Executive Departments, under the name of Milo B. Stevens & Co.; that his said interest applies to all receipts of the firm from and after November 23, 1896, the date when the old firm was terminated by the death of Mr. Milo B. Stevens;

That under date of December 14, 1896, the Commissioner of Pensions was informed, by letter, of the acquirement by him of a partnership interest in the business of the firm of Milo B. Stevens & Co. before the Bureau, as follows:

Office of Milo B. Stevens & Company, Attorneys and Solicitors,
Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Late of 14th Ohio Battery; Eugene E. Stevens, Attorney-at-Law; Thomas R. Harney, Late of U. S. Pension Bureau.

E. E. S.

E. F. C.

CLEVELAND, *December 14, 1896.*

Hon. Commissioner of Pensions.

SIR: We beg to state for the information of the Office that Mr. Thomas R. Harney, lately admitted to practice as an attorney before the Department, has acquired an interest as a general partner in the business of the firm before the Office.

Very respectfully,
(Signed)

MILO B. STEVENS & CO.

That since the formation of the said partnership with Eugene E. Stevens and the acquirement of his said interest as stated, there has been expended by the firm, in various ways, in advertising the new firm, as Milo B. Stevens & Co., as stated, some thousands of dollars, the precise amount not being determinable

without examination of accounts at the various offices of the firm; and that said new firm has filed, from November 23, 1896, to date, more than 8000 cases (and powers of attorney), and numbers of cases so filed have been allowed and the fees therein paid to said firm;

That until the receipt, by said firm, of an official letter from the Acting Commissioner of Pensions, dated April 2, 1897, stating that "the use of the firm name of Milo B. Stevens & Company is improper, under the rules of practice before this Bureau, unless by permission of the Honorable Secretary of the Interior," he did not know and had no reason to believe that he might not, under the official practice, prosecute claims before the Department, and its several bureaux, as a partner of Eugene E. Stevens under the name of Milo B. Stevens & Co., or that it was necessary or required that he seek and obtain official sanction or permission so to do; that he knows of no decision or ruling printed and promulgated for general information, establishing the declared rule or rules of practice stated; that he has for more than fifteen years last past been in almost daily intercourse with the Bureau of Pensions, first as an employé therein, and later as principal clerk of Milo B. Stevens & Co., and last as an attorney before the Bureau, as stated, and he believes that no decision or ruling of such import as stated has been printed and promulgated for general information, and that had such decision or ruling been so promulgated, he would have known it;

That on or about April 8, 1897, he appeared in person before the Commissioner of Pensions, and after a hearing the Hon. Commissioner consented and directed that no further action be taken in the matter by the Bureau until the new Assistant Secretary of the Interior should qualify, when the firm would proceed formally to secure official action of the Bureau and of the Department;

275 That he (and said firm) has acted throughout in good faith and with a desire and purpose to observe the known rules of practice for the admission and recognition of attorneys, and that the refusal to recognize him as of Milo B. Stevens & Co. will seriously injure and damage him without adequate remedy or recourse.

He further saith not.

THOMAS R. HARNEY.

Sworn and subscribed to before me this 22d day of June, 1897, and I further certify I am disinterested.

[SEAL.]

NATHAN H. ROBERTS,
Notary Public.

276

RESPONDENT'S EXHIBIT 9.

Filed June 9, 1908.

Milo B. Stevens & Co., War Claim Attorneys and Solicitors, Washington, D. C., Chicago, Ill., Cleveland, Ohio, Detroit, Mich.

Milo B. Stevens (Estate), Late of 14th Ohio Battery; Eugene E. Stevens, Attorney-at-Law; Thomas R. Harney.

Notice.

We regret to announce the death of the senior member of the firm, Mr. Milo B. Stevens, late of the 14th Ohio Indpt. Batty. Lt. Arty., on November 23, 1896, at Cleveland. The business of the firm will be carried on as before, by the junior member, Mr. Eugene E. Stevens, the only surviving son of the deceased, who is a member of the bar of the Supreme Court of the District of Columbia, and who for over fourteen years has been actively associated with his father as a partner in the conduct of the firm's business.

Associated with Mr. Stevens, as a full partner, will be Mr. Thomas R. Harney, formerly of the U. S. Pension Bureau, who for nearly ten years has been in the firm's employ as manager of the principal office, at Washington, and as principal clerk of the firm.

The business will continue to be conducted, without interruption, with offices at Washington, Chicago, Cleveland, and Detroit, and the interests of those who have entrusted or may hereafter entrust their business to the firm will receive the same careful attention as heretofore.

Respectfully and fraternally,

MILO B. STEVENS & CO.

December 1, 1896.
(11-30-96. 1 M.)

277

RESPONDENT'S EXHIBIT No. 10.

Filed June 9, 1908.

Office of Milo B. Stevens & Company, Attorneys and Solicitors,
Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Late of 14th Ohio Battery; Eugene E. Stevens, Attorney-at-Law; Thomas R. Harney, Late of U. S. Pension Bureau.

T. R. H.

E. F. C.

WASHINGTON, *July* 12, 1897.

Hon. Secretary of the Interior.

SIR: In compliance with your ruling of the 24th ultimo in the matter of the recognition of Eugene E. Stevens and Thomas R. Harney at attorneys before the Department under the firm name

and style of Milo B. Stevens & Co., we have the honor to hand you herewith an affidavit from Martha G. Stevens, the legal representative of Milo B. Stevens, deceased; and also the joint affidavit of Eugene E. Stevens and Thomas R. Harney covering, we believe, the requirements of said ruling.

We have also filed with the Hon. Commissioner of Pensions similar affidavits to those herewith filed.

Very respectfully,

MILO B. STEVENS & CO.

278

RESPONDENT'S EXHIBIT No. 11.

STATE OF OHIO, *County of Cuyahoga*:

In the matter of the application of Messrs. Eugene E. Stevens and Thomas R. Harney for recognition before the Pension Bureau, Department of the Interior, under the firm name of Milo B. Stevens & Co., personally came before me, a Notary Public in and for the County aforesaid, Martha G. Stevens of No. 578 Cedar Ave., Cleveland, Ohio, who being duly sworn says that she is the widow of the late Milo B. Stevens who died on November 23, 1896, and who was the senior member of the firm of Milo B. Stevens & Co., Pension and War Claims Attorneys, of Washington, D. C., Cleveland, Ohio, Chicago, Ill., and Detroit, Michigan. That as proof that she is the widow of said Milo B. Stevens, reference may be had to his pension claim, Cert. No. 923,959, which was adjudicated in her favor on the 19th day of January, 1897.

That she is the legal guardian of Evelyn Stevens, minor child of said Milo B. Stevens, and for herself and in behalf of said minor, she declares that she has no objection to the use, by Eugene E. Stevens and Thomas R. Harney, of the name of Milo B. Stevens in the conduct of the old or new firm pension and was claims business of Milo B. Stevens & Co., before the Department of the Interior and the several bureaux thereof.

She further saith not.

MARTHA G. STEVENS.

Sworn to and subscribed before me this 6th day of July, 1897.

[SEAL.]

JOHN A. BOMMhardt,
Notary Public.

279

RESPONDENT'S EXHIBIT No. 12.

Filed June 9, 1908.

In Duplicate.

DISTRICT OF COLUMBIA, *City of Washington*:

In the matter of the application of Eugene E. Stevens and Thomas R. Harney for recognition before the Department of the Interior, and the several bureaux thereof, under the firm name of Milo B. Stevens & Company, personally appeared before me, a Notary Pub-

lic in and for the District aforesaid, Eugene E. Stevens and Thomas R. Harney, who being duly sworn declare as follows:

That they have received official notice under date of June 30, 1897, through the Law Division of the Bureau of Pensions, of the ruling of the Hon. Assistant Secretary of the Interior, dated June 24, 1897, as follows:

"Messrs. Eugene E. Stevens & Thomas R. Harney, will be allowed to practice before your office under the firm name of Milo B. Stevens & Company, provided that they procure from the personal or legal representatives of the late Milo B. Stevens, a statement, duly acknowledged, to the effect that no objection is had to the use of the name of Milo B. Stevens in the new firm, and that such paper be filed with the Department and a copy thereof filed in the Pension Office; and provided further, that Eugene E. Stevens and Thomas R. Harney shall not take into partnership with them any new person or parties to practice under the firm name of Milo B. Stevens & Company, and, that, upon the death of both parties the business carried on under the firm name of Milo B. Stevens & Company shall cease; and also provided, that the said Eugene E. Stevens & Thomas R. Harney shall file with the Department, and a copy thereof in the Pension Office, a joint statement, duly authenticated, accepting the terms, the privilege hereby accorded."

That they accept said ruling and it is their purpose and intention to observe each and all of the stipulations therein set forth, unless and until the Department in its discretion shall waive or abrogate, by decision or ruling, or other official action, the restrictions coupled with the granting to them, said Stevens and said Harney, recognition under the firm name stated.

They further say nothing.

EUGENE E. STEVENS.
THOMAS R. HARNEY.

Sworn to and subscribed before me this 8th day of July, A. D. 1897.

[SEAL.]

S. A. TERRY,
Notary Public.

Filed June 9, 1908.

Certificate of Marriage.

THE STATE OF OHIO, *Cuyahoga County*, ss:

I, Alexander Hadden, Judge of the Probate Court within and for the County of Cuyahoga, do hereby certify that the following is a true and correct Transcript taken from the Marriage Records of this office, where the same is by law required to be kept, to wit:

THE STATE OF OHIO, *Cuyahoga County*, ss:

I certify that on the 19th day of October, 1898, Mr. Thomas R. Harney, and Mrs. Martha G. Stevens, were by me legally joined in marriage.

(Signed)

REV. MYRON G. BROWNE.

In Testimony Whereof, I have hereunto set my hand and the seal of said Probate Court, at the City of Cleveland, in said County, this 6th day of June, 1907.

[SEAL.] (Signed)

ALEXANDER HADDEN,
Probate Judge,

(Signed)

By C. O. DRAKE, *Deputy Clerk.*

281

RESPONDENT'S EXHIBIT No. 14.

Filed June 9, 1908.

THE STATE OF OHIO, *Cuyahoga County*, ss:

In the Probate Court.

Estate of MILO B. STEVENS, Deceased.

Application for Letters of Administration.

To the Honorable the Judge of the Probate Court:

The undersigned hereby makes application to be appointed as administrator on the estate of Milo B. Stevens late of the City of Cleveland in said county, deceased, and on oath states that said Milo B. Stevens died on or about the 23d day of November 1896, intestate, leaving a widow, and the following named persons his next of kin:

Names.	Degree of kinship.	P. O. address.
Martha G. Stevens.....	Widow.....	578 Cedar ave.
Evgev E. Stevens	Adult son	4 Plymouth st.
Evelyn Stevens.....	Minor daughter.....	578 Cedar ave.

Applicant further states that there is not to his knowledge any last will and testament of said decedent in existence. That the whole personal estate of said decedent consists of house hold and office furniture, live stock, bank credits and business interests, the probate value of which will — is unknown. The real estate of said decedent consists of house and lands, the probate value of which will not exceed \$25,000.

(Signed)

JOHN A. BOMMHARDT,
Resides at No. 578 Cedar Ave., Cleveland, Ohio.

Sworn to and subscribed before me this 30 day of Nov. 1896.

Probate Judge.

(Signed)

F. M. CHANDLER,
Deputy Clerk.

282

On back of Former Sheet.

The undersigned, the widow, husband, and heirs at law of said Milo B. Stevens, hereby decline to accept the trust of administering upon his estate, and suggest the appointment of John A. Bommhardt, as administrator.

(Signed)

MARTHA G. STEVENS,
EUGENE E. STEVENS,
EVELYN STEVENS,
By MARTHA G. STEVENS.

This true copy of the Original on file in the Probate Court, at Cleveland, Cuyahoga Co., Ohio. made by me,

(Signed) E. P. OLMSTED,

Special Examiner, U. S. Pension Bureau.

[Endorsed:] Doc. 46. No. 15,571. Probate Court, Cuyahoga County. Estate of Milo B. Stevens. Application for letters of Administration. Filed Nov. 30, 1896.

283

RESPONDENT'S EXHIBIT No. 15.

Filed June 9, 1908.

This Inventory and appraisal of Estate of Milo B. Stevens In *Schedule A.*, Personal Goods and Chattels belonging to the Estate of the said Milo B. Stevens, deceased, which are assets in hands of the Administrator, as shown to us.

Item third (3) $\frac{2}{3}$ interest in the partnership "assets of the late partnership Milo B. Stevens and Co., pension and claim attorneys, comprised of said Milo B. Stevens and Eugene E. Stevens."

Appraised value \$41,928.59.

Signed by appraisers.

Also sworn to by John A. Bommhardt, that such inventory contains a true statement of all the estate and property of the deceased which has come to the administrator's knowledge.

Sworn to Dec. 21, 1896.

*Items from Administrator's Final Account, Signed and Sworn to by
John A. Bommhardt, Administrator.*

"APRIL 27, 1897.
Amount Received.

Received from
"1897.

April 10. Sale of Partnership interests \$41,928.49.

"1897.

April 10. Paid to Martha G. Stevens her share in partnership,
Voucher 25, \$13,976.19.

April 10. Paid to Martha G. Stevens, Guardian Evelyn Stevens,
her share in partnership, Voucher 26, \$13,976.20.

April 10. Paid to Eugene E. Stevens, his share in partnership int,
Voucher 27, \$13,976.20."

This final account was properly approved June 7, 1897, which
operated as a discharge of the Administrator.

In re Estate of MILO B. STEVENS, Deceased.

Nov. 23, 1896.

The Original on file in Probate Court, Cleveland, Cuyahoga Co.,
Ohio, File No. 15,571.

This true copy from the original made by me.

(Signed)

E. B. OLMSTED.

Special Examiner.

284

RESPONDENT'S EXHIBIT No. 16.

Filed June 9, 1908.

Voucher #25.

WASHINGTON, D. C., April 10, 1897.

Received of John A. Bommhardt, Administrator of the estate of
Milo B. Stevens, deceased, one third of the two-thirds interest of Milo
B. Stevens, deceased, in the partnership business of the said Milo B.
Stevens and Co., appraised at \$13,976.20.

(Signed)

EUGENE E. STEVENS.

Voucher #26.

CLEVELAND, April 8, 1897.

Received of John A. Bommhardt, Administrator of the estate of
Milo B. Stevens, deceased, one third of the two thirds interest of
Milo B. Stevens, deceased, in the partnership business of the said
Milo B. Stevens and Co., appraised \$13,976.19.

(Signed)

MARTHA G. STEVENS.

Voucher #27.

CLEVELAND, April 8, 1897.

Received of John A. Bommhardt, Administrator of the estate of
Milo B. Stevens, deceased, one third of the two-thirds interest of

Milo B. Stevens, deceased, in the partnership business of the said Milo B. Stevens and Co., appraised at \$13,976.20.

(Signed) MARTHA G. STEVENS,
As Guardian of the Estate of Evelyn Stevens (Minor).

This true copy of the vouchers above referred to made by me, E. B. Olmstead, Special Examiner, U. S. Pension Bureau. The original of the above on file in Probate Court, Cleveland, Cuyahoga Co., Ohio, *In re* estate of Milo B. Stevens, deceased Nov. 23, 1896. File No. 15,571.

285 Filed Jun- 9, 1908. J. R. Young, Clerk.

RESPONDENT'S EXHIBIT No. 17.

Filed June 9, 1908.

Law Division.

3-1868.

DEPARTMENT OF THE INTERIOR,
BUREAU OF PENSIONS,
WASHINGTON, D. C., *April* 13, 1907.

Eugene E. Stevens and Thomas R. Harney, doing business under the firm name of Milo B. Stevens & Co., attorneys, Washington, D. C.

SIRS: You, and each of you, were, on the dates herein mentioned, entitled to practice before the Bureau of Pensions, of the Department of the Interior, and were engaging in such practice under the firm name of Milo B. Stevens & Company. As such attorneys, you, and each of you, are hereby charged with improper, unprofessional and illegal conduct in connection with each claim for military bounty land jointly filed by you and mentioned in this letter, in resorting to the methods and in committing the specific offenses set forth below.

Case of META G. THORNTON.

Original No. 100,874.

On February 18, 1904, you filed in this Bureau an application and fee contracts executed by Meta G. Thornton, widow of Henry F. Thornton, late of the 1st Virginia Volunteers, Mexican war.

On May 12, 1904, during the pendency of this claim, you wrote the following letter to your said client:

286

Ex. #18.

"Office of Milo B. Stevens & Company, Solicitors of Claims and Patents, Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

H-W.

WASHINGTON, *May* 12, 1904.

Mrs. Meta G. Thornton, 228 N. Lewiston St., Lexington, Kentucky.

MADAM: We write to say that we are still awaiting the action of the Pension Bureau in your bounty-land case. It will probably be some little time yet before it is settled, but as soon as it is settled we will notify you.

By the way, do you care to sell the bounty-land warrant in the event of our securing it for you? If so, we believe that we can find a purchaser for it, provided you are willing to accept a reasonable offer for it.

We presume that you understand that the warrant does not call for any particular land. It simply gives you the right to take up 160 acres of Government land if you can find any land at this late day that you would care to enter with it. It is not likely that you will want to use the warrant yourself and hence it will probably be to your interest to sell it for a cash consideration. We advise you to sell it, but of course you can use your own pleasure in the matter. You can probably get as much as \$1.25 per acre for the warrant, which will make the warrant bring you \$200 cash. Do you care to sell it? If so, let us hear from you promptly about it.

Very respectfully,

(Signed)

MILO B. STEVENS & CO."

Your statement in said letter that your client could probably get as much as \$1.25 per acre for the warrant was misleading, and it is charged that when you wrote this letter you well knew that if you then had the warrant you could have sold the same for not less than \$3 per acre.

Said claim was rejected on May 27, 1904, and you were so advised. Thereafter you appealed from the action of this Bureau in the premises and thereafter, on April 5, 1905, you filed in the Department of the Interior a motion for reconsideration in the form of a printed brief, consisting of sixteen (16) pages and one (1) cover. At the

287 the Department of the Interior to require that such briefs be furnished, nor has it at any time been the practice of said Department to require that appeals from the action of this Bureau be printed. Said brief was not printed by reason of any rule or requirement of the Department, and was not printed in the interest of your said client, but was printed for the purpose of exploiting your business as is fully shown by your own use of said brief.

On April 25, 1905, you wrote a letter to your said client which reads as follows:

"Office of Milo B. Stevens & Company, Solicitors of Claims and Patents, Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

H-W.

WASHINGTON, *April* 25, 1905.

Mrs. Meta G. Thornton, Lexington, Kentucky.

MADAM: We have your favor of the 19th instant in which you decline to accept a less sum than \$200 for the bounty-land warrant, provided we are successful in securing it for you. We presume that you understand that our work in the case alone, if we charged for it in accordance with the practice of lawyers, would be at least \$150.00. When we made the contract with you for the purchase of the warrant we had no idea that the claim was going to be rejected, nor had we any idea that we were going to be subjected to the expense of appealing it three times to the Honorable Secretary of the Interior. The printer's bill, alone, is about equal to the fee that you contracted to pay us.

It is possible that you have not heretofore understood these matters and we have, therefore, concluded to write you again about it. We hope under the circumstances that you will consent to name a more reasonable sum for the warrant, in the event that we are successful in securing it for you. We think you ought to do it and we hope you will do it.

Very respectfully,
(Signed)

MILO B. STEVENS & CO."

At the time that you, for your own purpose, procured the motion for reconsideration above mentioned to be printed, the customary price for a single brief of that character, to be completed in 288 36 hours, was \$1 per page and \$2 per cover; and if you had paid the highest price for the printing of said brief, the expense thereof would not have exceeded the sum of \$18, and the only other printed matter filed by you in connection with the claim was one declaration and two forms for affidavits and two forms for fee agreements, therefore, the statements contained in your letter of April 25, 1905, quoted above, to the effect that the printer's bill alone is about equal to the fee that your client contracted to pay you was and is false and misleading.

This claim was finally rejected and no warrant was issued.

Case of MARY E. EATON.

Warrant No. 115,693-160-55.

You were attorneys of record before this Bureau and the Department of the Interior when, on October 26, 1904, you filed a declaration executed by Mary E. Eaton, widow of Thomas Eaton, late of U. S. S. "Warren" (1845-47), and duplicate articles of agreement executed by said client. You secured Mr. Henry Hollyday, Jr., of Easton, Md., to act as your correspondent in connection with said

case, and on April 11, 1905, you wrote a letter to Mr. Hollyday which reads as follows:

"Office of Milo B. Stevens & Company, Solicitors of Claims and Patents, Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

H-W.

WASHINGTON, April 11, 1905.

Col. Henry Hollyday, Jr., Easton, Md.

289 DEAR SIR: We have heretofore had some correspondence with you concerning the bounty-land matter of Mrs. Mary Eaton, and we write to say that we were very much disappointed when her claim was rejected. When the claim was filed, and for some time thereafter, it was clearly allowable under the practice that had obtained in the Pension Bureau since the year 1855. The Interior Department, however, on December 19, 1904, rendered a decision to the effect that in order for the widow to be entitled to a bounty-land warrant under the act of March 3, 1855, she must have been the widow of the soldier or sailor on March 3, 1855. Under that decision the Pension Bureau took up the case of Mrs. Eaton and rejected it. We have, however, filed an appeal in the matter and it will probably be some time yet before a decision is rendered.

Inasmuch as you have shown so much interest in the case of Mrs. Eaton, we have concluded to send you by this day's mail a printed copy of our brief filed in the bounty-land case of the widow of Henry Thornton. The same question was involved in that case as is involved in the case of Mrs. Eaton.

In the Thornton case, like in the Eaton case, our fees, if we are successful, will be \$25, and that will not pay the cost of the printed brief in the Thornton case.

We intend to follow up the appeals in both cases even though we lose money by doing it. Mrs. Thornton has agreed that if we are successful she will sell the warrant to us for a very nominal consideration. We have not asked Mrs. Eaton to do this, but it has occurred to us that perhaps you may not be unwilling to submit the matter to her and have her state the lowest cash price she will accept for the warrant if we finally succeed in getting it for her. You will no doubt recognize the reasonableness of this proposition. We did think of writing to her direct on the subject, but inasmuch as you have been attending to the matter for her at that end of the line, we deemed it but courteous to take up the matter through you.

Very respectfully,
(Signed)

MILO B. STEVENS & CO."

You forwarded to Henry Hollyday, jr., a copy of your printed brief in the Meta G. Thornton case, and thereby applied said brief to the exact purpose for which you originally intended it.

The claim was allowed and a warrant was issued to Mary E. Eaton, your client, on August 28, 1905. On September 8, 1905, you presented at this Bureau an order signed by the warrantee to deliver the

warrant to you, and the same was delivered to you on that date, and
on the same day you caused to be endorsed upon said warrant
290 a form of assignment thereof to Thomas R. Harney, a mem-
ber of your firm, and transmitted said warrant to Mr. Holly-
day with a letter requesting him to cause the warrantee to make her
cross-mark to the assignment; to have two attesting witnesses sign
to the left of her signature; to have the assignment acknowledged
before an officer who has a seal; and to forward the warrant to the
Riggs National Bank, Washington, D. C., with a letter instructing
said bank to deliver the warrant to you upon the payment of \$200,
you offering, in said letter to pay the bank charges.

The warrant was so assigned and was sent to said bank; and said
bank, on your behalf, paid to your client, the warrantee, the sum of
\$200, which amount was received by her on September 14, 1905, and
said warrant was subsequently sold to Angus J. Conoly, of Perry,
Taylor County, Florida, who testifies that he never paid less than
\$3.60 nor more than \$6.50 per acre and commissions, and that at
the time he purchased warrant No. 115,693, the price was \$4.25.

In your letter of April 11, 1905, above quoted, you made mislead-
ing and false statements with reference to the cost of the printed
brief in the case of Meta G. Thornton.

Case of LETITIA J. HICKMAN.

Warrant No. 115,698-160-55.

In your capacities as such attorneys, on May 13, 1904, you, jointly,
filed in this Bureau a declaration and duplicate articles of agreement
for fee executed by Letitia J. Hickman of St. Joseph, Missouri, child
of Nathan Frakes, late of Captain Thomas Morris's company, Ken-
tucky Volunteers, war of 1812, and on May 13, 1904, you
291 wrote a letter to your client, Mrs. Hickman, the last para-
graph of which reads as follows:

"In the event that we secure the bounty-land warrant for you, are
you willing to sell it to us for \$200 cash? We consider this a very
fair offer for it."

On September 15, 1904, you wrote another letter to Mrs. Hickman
in which you state, among other things:

"Please reply promptly to this letter, giving us full and correct
answers to each question asked therein; and let us know whether you
will accept our offer of \$200 for the assignment of the warrant to us
in event we succeed in securing one for you."

On October 4, 1904, you sold the bounty land warrant of Harriet
S. Bacot, warrant No. 52,734-160-55, for the sum of \$510, and, on
the same date, you wrote to your client, Mrs. Hickman, stating:

"If we succeed in securing the warrant for you we are willing to
pay you \$300 for it, less our fee of \$25. This is a pretty high price
for the warrant, but we will pay that amount for it, provided you
and your daughter will see Mr. Wade and have him assist all of us
in trying to get together the proofs necessary to establish your title
to the warrant."

On the same date, October 4, 1904, you wrote a letter to Mr. Robert H. Wade, a notary public, at St. Joseph, Missouri, with reference to this case, suggesting that:

"We would like to have you represent us in our endeavor to complete this case and we are perfectly willing to pay your reasonable charges. We have written to her to call on you with her daughter and to give you the information called for in our letter of May 13th."

And thereafter, on the dates given, you wrote letters to said Robert H. Wade, in which you made the following statements relative to this case:

November 29, 1904:

292 "It is going to be a little difficult to establish a case; but we are willing to undertake it provided you are willing to make your fee, like our own, dependent upon success. It is an exceedingly difficult case and we are by no means anxious to proceed with it unless Mrs. Hickman is willing to give her active coöperation. * * * You see what sort of a case we are engaged in and as the law makes our fee of \$25 dependent upon success we are not willing to advance any money for expenses at that end of the line. If Mrs. Hickman is willing, however, to reimburse you and you are willing to represent us for a part of our fee and make the same dependent upon success, it is believed that we may be able to establish the case.

Mrs. Hickman has demanded that we pay her \$300 for the warrant if we succeed in securing it. That was an unreasonable demand, especially in the light of the obstacles to be overcome in the prosecution of the case. She ought to be willing to accept \$200, and we wish that you would submit the matter to her again. If she is willing to do that we are willing to treat you liberally in the matter of compensation in the event of success in both cases."

On December 13, 1904:

"We wish that you would take up with Mrs. Hickman again the matter of the price she is to receive for the land warrant in the event of our being able to secure it for her. See the last paragraph of our letter of November 29th. We think she is inclined to be unreasonable in her demands, especially in view of the great amount of work involved. See if you cannot make a better arrangement with her."

December 23, 1904:

"We note with interest what you say about the price of the warrant. We appreciate your situation in the matter and we think we can safely leave it in your hands. When we first canvassed the case we had no idea that we were going to encounter so many obstacles or else we would never * * * have made any such an offer to Mrs. Hickman for the warrant. You can no doubt impress this matter upon her and bring about a compromise on the question of price to be paid for the warrant."

January 21, 1905:

"We note with pleasure that Mrs. Hickman has consented to accept \$250 instead of \$300 for the bounty-land warrant in the event of our securing it for her. We have no doubt that you have made the best bargain possible with her and yet we think she ought to have consented to take \$200. We are well pleased with the manner in which you have represented us in this case, and just as soon
293 as the assignment of the warrant is made to us, we will take pleasure in making settlement with you for your services."

March 24, 1905:

"We wish that you would acquaint Mrs. Hickman with the situation so that she may appreciate the difficulties that we have encountered. We believe that under the circumstances she ought to consent to sell us the warrant, if we finally succeed in getting it at a much less price than she has heretofore named. Submit the matter to her, for us, please."

April 3, 1905:

"We think that she ought to be willing to accept a very nominal sum for the bounty-land warrant if we finally succeed in winning the case on appeal. We are taking all the risks, and in view of that fact, we think that she ought to be willing to sell us the warrant, if we are ever successful in securing it for her at a very nominal price."

April 8, 1905:

"We have your favor of the 5th instant concerning the bounty-land matter of Mrs. Hickman, but we cannot say that we quite understand what you mean when you say "she offers to take \$75 cash. If you do not think this is low enough, let me know and send your offer."

We presume that you understand that no one would think of paying \$75 or any other amount for the prospect of securing the warrant."

April 14, 1905:

"We have your favor of the 10th instant in the Hickman matter, if we understand you correctly Mrs. Hickman is willing to accept \$75 for the bounty-land warrant, payable when it is properly assigned to us provided we are successful in securing it for her. The \$75 is to be paid to her free of all charges. In other words, we are not to charge her anything for our services in the matter. * * * Kindly have Mrs. Hickman sign and date the inclosed agreement and return it to us."

July 11, 1905:

"It will no doubt be gratifying to you as well as to Mrs. Hickman to know that our third appeal in the bounty-land case of Thornton, was sustained by the Hon. Secretary of the Interior. He reversed the action of the Pension Bureau and he also reversed his two former

decisions. In view of the last decision we will be able, we believe, to have Mrs. Hickman's case allowed."

294 The claim was allowed and the warrant was issued August 28, 1905, and on September 5, 1905, you wrote a letter to said Robert H. Wade, in which you stated, among other things:

"We are sending you herewith an order on the Commissioner of Pensions for Mrs. Hickman to sign, date and return to us. We will present the order and secure the bounty-land warrant, and then we will prepare a proper assignment on the back of it to be executed by Mrs. Hickman. The warrant will then be sent to you for Mrs. Hickman to execute the assignment and then you can send it to the Riggs National Bank, Washington, D. C., with instructions to the bank to deliver it to us upon our first paying the bank seventy-five dollars (\$75) for Mrs. Hickman. At the same time we will make prompt remittance to you."

On September 11, 1905, the warrant was handed to you at this Bureau as the attorneys of record for your client, Letitia J. Hickman, and, on that date, you wrote a letter to said Robert H. Wade transmitting said warrant with a form for an assignment endorsed thereon, and with instructions as to how said assignment should be executed by your client, adding that the warrant might then be sent to the Riggs National Bank, Washington, D. C., with instructions to the bank to deliver the warrant to you upon the payment of the sum of \$75 for Mrs. Hickman, or if satisfactory to Mrs. Hickman, the warrant could be sent to you direct and you would then send her a certified check for the amount; and in this letter you also asked Mr. Wade to state the amount which he would be willing to accept for his services in connection with this case to date.

Your agent, said Robert H. Wade, in compliance with the instructions contained in your letter last above mentioned, caused your client to appear before him on September 14, 1905, and execute an assignment of said warrant to Thomas R. Harney, a member of your firm; and said warrant was thereafter assigned to J. F. King, of Perry, Taylor County, Florida, who, on November 9, 1905, used the same in making a location at the Gainesville, Florida, land office.

At the time that you induced your said client, Letitia J. Hickman, to assign said warrant to you for the sum of \$75, it was worth not less than \$700. It appears that after originally agreeing to prosecute this claim for a fee of \$25, as provided by the act of July 4, 1884, you first offered your client the sum of \$200 for the warrant, if issued; that you subsequently offered your client the sum of \$300 for the warrant, if issued; that you subsequently, through your agent, secured your client to scale the price of the warrant to \$250; and that subsequently, through your agent, caused your client to agree to sell said warrant for \$75, and that after the issue of the warrant you actually, through your said agent, induced your client to assign said warrant to you in consideration of the sum of \$75, and paid to said agent the sum of \$25 for his services in that behalf.

Case of HEIRS OF THOMAS PYGALL.

Warrant No. 42,382-160-47.

You were the attorneys of record in this claim and were thoroughly familiar with the provisions of the act of July 4, 1884, governing the payment of attorneys' fees in bounty land cases, when, on December 16, 1904, you wrote a letter to John S. Pygall, of Rosendale, Wisconsin, the first paragraph of which reads as follows:

296 "It is going to be very difficult to obtain a duplicate of the bounty-land warrant that was issued to your mother and the five children, because it is going to be difficult for you to furnish the required evidence. However, we have concluded to try the case if the surviving heirs at law will agree to sell the warrant to us for one hundred dollars (\$100) cash, provided we secure it. If the surviving heirs at law will agree to the above, we will make no charge for our services in prosecuting the case and we will pay for the advertisements that will have to be inserted in the newspapers, concerning the loss of the warrant. We will be to considerable expense in the matter and besides we will have to take all the chances of success. If the above is satisfactory to you, then we would suggest that you do this:"

When you wrote said letter you well knew that if the duplicate warrant had been issued and had been assigned to you, you could have sold the same for not less than \$480 and, in your said letter of December 16, 1904, you made no statement whatever as to the actual value of said warrant, but, on the contrary, thereby attempted to enter into a champertous and illegal contract to pay the expenses incident to the prosecution of the claim and to absorb over three-fourths of the value of the warrant, if issued. Any written or oral contract which you may have entered into to that end is wholly void and in violation of the provisions of Section 2436, R. S. U. S.

The claim has been allowed, and the warrant has been forwarded to the parties in interest by this Bureau.

Case of ELVIRA E. GRAVES.

Warrant No. 49,456-80-55.

As such attorneys you, jointly, on October 5, 1903, filed in this Bureau an application executed by Elvira E. Graves, of Jackson County, Tennessee, for the issuance of a duplicate of the military bounty land warrant above cited. The duplicate was issued on April 27, 1904, and was turned over to you as the attorneys 297 for said Elvira E. Graves on May 19, 1904. During the month of May, 1904, you induced your client, said Elvira E. Graves, to assign said warrant to you for the sum of \$100, and on July 30, 1904, the warrant was sold, through William J. Johnson, of Washington, D. C., to Abram Mathews, of Marquette, Michigan, for \$364.90.

John W. Hall, a special examiner of this Bureau, was, on November 22, 1906, instructed to take testimony with reference to the

price paid for said warrant, and for certain other warrants which you secured for various clients, and under said instructions, said Hall proceeded to take the deposition of William J. Johnson, warrant dealer, of Washington, D. C., under a subpoena issued out of the Supreme Court of the District of Columbia, and on November 24, 1906, said Johnson, after having had a conversation with you over the telephone, refused to testify with reference to the price paid by him for this and certain other warrants, basing his refusal on the alleged ground that he regarded that question as one requiring the disclosure of his private commercial transactions.

Case of MARGARET MONAGHAN.

Warrant No. 115,689-160-55.

As such attorneys you, jointly, filed in this Bureau and prosecuted to a successful issue, the application of Margaret Monaghan, widow of Thomas Monaghan, late private, Co. F, 1st United States Infantry, Texas and New Mexico Indian war, warrant No. 115,689-160-55, and you were certified a fee of \$25 for your services in that behalf under fee agreements filed by you.

298 Said warrant was issued on July 7, 1905, and delivered to you on the 24th of that month, and on August 7, 1905, you induced your client to assign said warrant to Thomas R. Harney, a member of your firm, for the sum of \$200, and said warrant was sold to W. R. Abbott, by R. A. Fennell, of Washington, D. C., for \$720.

Case of WILLIAM C. McKEAN.

Warrant No. 542-40-55.

As such attorneys you, jointly, on March 8, 1905, filed in this Bureau an application for a military bounty land warrant executed by William C. McKean of Seguin, Guadalupe County, Texas, based upon service in Captain McCullough's company, Texas Mounted Volunteers (Mexican War), and during the pendency of said claim, entered into an agreement by virtue of which the warrant, if issued, was to be assigned to you in consideration of the sum of \$75.

The warrant was issued on December 1, 1905, and turned over to you in your capacity as the attorneys of record on February 7, 1906, you having been certified a fee of \$10 for services rendered in the prosecution of the claim; on February 13, 1906, the warrant was assigned to Thomas R. Harney, a member of your firm, in consideration of the sum of \$75 paid by you to your said client, and, on February 21, 1906, you sold the warrant for the sum of \$240.

Case of SALLIE B. REDDICK.

Warrant No. 115,700-160-55.

As such attorneys you, jointly, on January 10, 1905, filed in this Bureau an application executed by Sallie B. Reddick, of Los Angeles, California, as the widow of Jonathan Reddick, late of Captain
299 Hall's company, 3d Illinois Volunteers Blackhawk Indian war, and, on the same date, you filed duplicate articles of agreement in connection with said claim; the warrant was issued on August 28, 1905, and was delivered to you as attorneys for the warrant on September 11, 1905. On September 16, 1905, by paying to your client the sum of \$200, you induced her to assign said warrant to Thomas R. Harney, a member of your firm, and, said warrant was sold to W. R. Abbott, by R. A. Fennell, of Washington, D. C., for \$720, on September 19, 1905.

Case of PAULINE CLARK and WILLIAM L. SHIRKEY, Children of John Shirkey.

Warrant No. 97,078-120-55.

As such attorneys, on June 20, 1904, you, jointly, filed in this Bureau an application executed by Pauline Clark, née Shirkey, in her own behalf and in behalf of her then living and now deceased brother, William L. Shirkey, as the son and daughter of John Shirkey, late of Captain James Rowland's company of the 4th Virginia Militia, war of 1812.

You prosecuted the claim to a successful issue and the warrant was delivered to you, as such attorneys, on September 30, 1904, and you thereupon caused to be endorsed thereon a form for the assignment of said warrant to Eugene E. Stevens, a member of your firm.

You induced your said clients to assign said warrant to Eugene E. Stevens on March 23, 1905, in consideration of the sum of \$150. Said Eugene E. Stevens assigned said warrant, in blank, on April 22, 1905; on April 25, 1905, you sold said warrant for \$432, and the said warrant was thereafter sold to John H. Hollcroft of
300 Little Rock, Arkansas, for the sum of \$540.

In each of the above-cited cases, as the attorneys of record, it was your duty to have promptly turned the warrants over to your client, and, if it was your desire to purchase the same, to have made full disclosure to each client as to all the facts concerning the value of his warrant which might influence him in determining the question of sale. You failed to so deliver any warrant, and failed to make any disclosure whatever as to the value thereof, but, on the contrary, induced each of said clients to assign to you the warrant you had secured to be issued, by offering an inadequate price therefor and by concealing from your client the market value of his warrant.

You filed duplicate articles of agreement as provided by the act of July 4, 1884, in various cases, as above stated, stipulating therein

that you would endeavor to the best of your ability to faithfully represent the interests of your clients and would prosecute their claims in consideration of a fee of \$25, when, as you well knew, it was not your intention to collect a legal fee for your services, but to indirectly obtain greater compensation than is provided by said act, by procuring the warrants at not over \$1.25 per acre, through taking advantage of the lack of knowledge of your clients in such matters, and by selling such warrants at their market value, this in violation of the provisions of sections 3 and 4 of said act, and in violation of the confidence of your said clients and of your professional duty in the premises.

In filing such articles of agreement, when it was not your intention to comply therewith, you intended to, and did for the time
301 being, deceive this Bureau in the premises.

Said warrants have not to this date been legally delivered to said clients and are illegally withheld from the warrantees in violation of the provisions of sections 3 and 4 of the act of July 4, 1884, and in violation of your professional duty in the premises.

Additional Cases.

As such attorneys you, jointly, filed and prosecuted to a successful issue the claims of

James Besser, Warrant No. 49486-80-55, Issued April 30, 1906;
John Clary, Warrant No. 115551-160-55, Issued September 29, 1904;
Sallie Gipson, Warrant No. 49482-80-55, Issued October 17, 1904;
Catharine Hogan, Warrant No. 97082-120-55, Issued October 9, 1905;

and upon the issue of such warrants induced your clients to assign the same to Eugene E. Stevens, or Thomas R. Harney, members of your firm, upon the payment of the smallest sums for which your said clients could be induced to part therewith, and you sold the warrants of said clients to warrant dealers at the highest prices which you were able to obtain, this in violation of the provisions of sections 3 and 4 of the act of July 4, 1884, and in violation of your professional duty to said clients.

You, and each of you, have sacrificed the interests of your said clients, in the manner set forth above, to the sole end that you might procure sums of money to which you had, and have, no legal right and title.

You will be allowed a period of thirty (30) days from the date of the receipt of this letter to show cause why it should not be recommended to the Secretary of the Interior that each of you be disbarred from practice before this Bureau.

Your answers to this citation should be under oath.

Very respectfully,

_____,
Commissioner.

302

Registry Return Receipt.

Form No. 1548.

APR. 13, 1907.

Received from the Postmaster at Washington, D. C., Registered
 { Letter }
 { [Parcel]* } No. 580555 From Post Office at Washington, D. C.,
 Addressed to Milo B. Stevens & Co.
 (Name of addressee.)
 Date, Apr. 15, 1907.

When delivery is made to an agent of the addressee, both addressee's name and agent's signature must appear in this receipt.

MILO B. STEVENS & CO.
 M. C. K.

A registered article must not be delivered to anyone but the addressee, except upon addressee's written order. When the above receipt has been properly signed, it must be postmarked with name of delivering office and actual date of delivery and mailed to its address, without envelope or postage.

303

RESPONDENT'S EXHIBIT No. 18.

Filed June 9, 1908.

3—1868.

Law Division.

WDC.

DEPARTMENT OF THE INTERIOR,
 BUREAU OF PENSIONS,
 WASHINGTON, D. C., May 22, 1907.

Hon. Harry E. Davis (Attorney), Jenifer Building, 7th & D Streets N. W., City.

SIR: I hereby acknowledge the receipt of your letter of even date, transmitting the response of Messrs. Eugene E. Stevens and Thomas R. Harney, practicing under the firm name of Milo B. Stevens and Co. Attorneys, to the letter of this Bureau dated April 13, 1907, citing them and each of them to show cause, if any they have, why it should not be recommended to the Secretary of the Interior that they be disbarred from practice before this Bureau, for the reasons therein set forth.

This matter will be held in abeyance for a period of ten days, to allow Messrs. Stevens and Harney to file such evidence as they may

possess, and may desire to offer in support of the allegations contained in their joint response to the citation.

Very respectfully,

_____,
Commissioner.

cc: Mr. Kimball

304 Henry E. Davis.

Edward B. Kimball.

Telephones (Long Distance): Office, Main 1829; Mr. Davis' Residence, North 2272; Mr. Kimball's Residence, North 1421; Cable Address, "Khedive."

Law Offices of Henry E. Davis, Jenifer Building, Seventh & D Sts.

WASHINGTON, D. C., MAY 22, 1907.

To the Honorable Commissioner of Pensions.

SIR: I have the honor herewith to submit the answer of Messrs. Eugene E. Stevens and Thomas R. Harney to your letter of April 13, 1907, charging them with improper, unprofessional and illegal conduct in connection with certain military bounty land claims.

In submitting this answer, I deem it not impertinent to say that the gentlemen affected have long been of good professional standing before the Department and of similar good personal standing in the community. Mr. Stevens is, and for same time has been, Treasurer of the Washington Symphony Orchestra. For many years he was a director and officer of the Choral Society, and is still Secretary of the Musical Art Society. He is Treasurer and a director of the Washington Playground Association, and Chairman of its Finance Committee, and also Chairman of the Trustees of the National Junior Republic at Annapolis Junction, Maryland, and Chairman of the Farm Committee thereof. And, besides these, he is Treasurer of the local auxiliary organization in the interest of the Manassas School for Colored Youth, and Chairman of the Swedenborg Club. He is a member of the University Club, the Monday Evening Club, a body of philanthropic workers, the Board of Trade, Sons of the American

305 Revolution, the District Society of the Red Cross, etc., and an active citizen and laborer in the suburban community where he lives, namely, Chevy Chase, having served as President of the Library Association and as a director of the civic organization of the village.

Mr. Harney is a director of one of the local banks, and, like Mr. Stevens, has a wide circle of friends and acquaintances in business circles.

Through their various connections and activities, both gentlemen are widely known locally, and these connections, if there were no other consideration, would prompt them to avoid any conduct personal or professional which might lead to action, whether official or otherwise, tending to discredit them in the eyes of the community and the estimation of their friends and associates.

And I beg to add that Mr. Milo B. Stevens, the founder of the firm, occupied a position before the Department and in the community enviable in every respect, and his widow and minor daughter,

who are the beneficial owners of a more than one-third interest in the firm's business, would be to that extent injured by any action such as your letter imports, and this, notwithstanding that each is personally wholly irresponsible for the actual conduct of the business. And, as respects the statement of the answer, on the twenty-fifth page thereof, that Messrs. Stevens and Harney, of their own motion, took the action there mentioned, I add my personal assurance to what they say. In my first interview with them on the subject under consideration, they communicated to me, as a matter already
 306 resolved upon, their purpose to take the step indicated, and I am sure that the genuineness of their motive in so doing is beyond all question.

Respectfully,
 (Signed)

HENRY E. DAVIS.

307 To the Honorable the Commissioner of Pensions.

SIR: The undersigned, Eugene E. Stevens and Thomas R. Harney, doing business, together with the estate of Milo B. Stevens, deceased, under the firm name of Milo B. Stevens & Co., Attorneys, have the honor to acknowledge your letter of April 13, 1907, charging us, the said Eugene E. Stevens and Thomas R. Harney, and each of us, with improper, unprofessional and illegal conduct in connection with each claim for military bounty land jointly filed by us, and mentioned in the said letter, in resorting to the methods and in committing the specific alleged offenses in the same set forth; and showing cause why it should not be recommended to the Secretary of the Interior that each of us be disbarred from practice before the Bureau of Pensions, we state as follows:

The claims mentioned are fourteen in number, being designated in your said letter as the cases of the following persons:

1. Meta G. Thornton;
2. Mary E. Eaton;
3. Letitia J. Hickman;
4. Heirs of Thomas Pygall;
5. Elvira E. Graves;
6. Margaret Monaghan;
7. William E. McKean;
8. Sallie B. Reddick;
9. Pauline Clark and William L. Shirkey, children of John Shirkey;
10. James Besser;
11. John Clary;
12. Sallie Gipson;
13. Catherine Hogan;
14. Eliza Stevens;

308 the last five, numbered from ten to fourteen inclusive, being grouped under the general designation "Additional cases."

For convenience of treatment, we consider these cases in their order, first stating your charge in respect of each, and next giving our reply to such charge.

I.

The Thornton Case.

The allegations in this case are as follows:

1. That on February 18, 1904, we filed an application and fee contracts in this case, and on May 12, 1904, during the pendency of the claim, we wrote a letter to the claimant that she could probably get as much as \$1.25 per acre for the warrant, whereas, when we wrote the said letter, we well knew that, if we then had the warrant, we could have sold the same for not less than three dollars per acre;

2. That the claim was rejected May 27, 1904; that we appealed from the action of the Bureau in the premises, and that thereafter, on April 5, 1905, we filed in the Department of the Interior a motion for reconsideration, in the form of a printed brief, consisting of sixteen pages and one cover, which brief was not printed by reason of any practice, rule, or requirement of the Department, and was not printed in the interest of the claimant, but was printed for the purpose of exploiting our business; and

3. That on April 25, 1905, we wrote another letter to the claimant, stating that the printer's bill was about equal to the fee that the claimant contracted to pay us, whereas the customary price for a single

brief of the character of that submitted by us was One Dollar
309 per page and Two Dollars per cover, so that, at the highest price for printing the same, the expense thereof would not have exceeded the sum of Eighteen Dollars, and that the only other printed matter filed by us in connection with the claim was one declaration and two forms for affidavits and two forms for fee agreements; wherefore our statement to the effect that the printer's bill alone was about equal to the fee that the claimant contracted to pay us was, and is, false and misleading.

(1) It is true that we filed the application and fee contracts and wrote the letter of May 12, 1904, as alleged, but it is not true that, when we wrote the said letter, we well knew that if we then had the warrant we could have sold the same for not less than three dollars per acre; and not only was no warrant ever issued in the case, but also, if we had had the warrant at the date of the said letter, we could not have sold the same for "not less than three dollars per acre", and, accordingly, we could not have known that we could have sold the same for that price. As matter of fact, we had, at that time, several warrants for sale, some of which we had for several months, and could not obtain a purchaser therefor, although they were offered for sale to various brokers in this city. There was, at the time, no demand or market for the warrants, and we could not then get anyone even to make an offer for them. Notwithstanding this situation, and notwithstanding the precarious value of such warrants, for the reasons hereinafter appearing, we offered the claimant Two

Hundred Dollars cash for the warrant, leaving the matter of
310 acceptance of the offer entirely to her; and we did not, at the time, know, and do not now know, of any sale, actual or expected, of any such warrant at the price of three dollars per acre; wherefore the charge that we knew that, if we then had the warrant,

we could have sold the same for not less than three dollars per acre is unfounded.

(2) We concede that it is not, and never has been, so far as we know, the practice of the Department of the Interior to require printed briefs to be furnished in appeals from the action of the Pension Bureau. We deny, however, that the brief in question was not printed in the interest of the claimant but was printed for the purpose of exploiting our business; on the contrary, we caused the brief to be printed in order to gain the particular attention of the Department to the case itself, which had already been twice rejected on appeal, and the question involved therein being far reaching in its effects.

The necessity for the brief and the cause of its being printed and submitted appear from the following facts: May 27, 1904, the claim was rejected by the Bureau upon specific grounds stated, referring to the acts of March 3, 1855, and February 11, 1847. June 11, 1904, an appeal was filed on the contention that the rejection of the claim, for the reasons stated, was an error of law. December 19, 1904, the Secretary rendered a decision upholding the action of the Bureau as it respected the act of February 11, 1847, and substituting an entirely new and different ground for refusing the warrant under the act of March 3, 1855. December 31, 1904, a motion for re-

311 consideration was filed, claiming error of law in the Secretary's holding as to the act of March 3, 1855, which motion was overruled January 25, 1905. The decision overruling this motion covers eight typewritten pages. As we had thus encountered two adverse decisions of the Department, namely, on December 19, 1904, and on January 25, 1905, we conceived that it would be difficult, if not impossible, to have another motion for reconsideration based on identical grounds, favorably entertained, unless we should personally appear before the Board of Pension Appeals and present the matter orally, with a volunteer promise that we would file a printed brief if the Department would consent to allow still another hearing. This we did, and that was the sole reason for filing the printed brief. To the preparation of this brief, we devoted earnest labor throughout several weeks, and, finally, filed the brief on April 5, 1905. And we aver the fact to be that the brief was occasioned and demanded by the situation of this case itself, and was filed therein for the purpose, if possible, of obtaining a favorable decision. On the strength of the arguments advanced in the brief, the Department, on May 31, 1905, overruled its two former decisions in the case, rejecting the claim, however, on other grounds, so that no warrant was issued. Incidentally, and as part of its decision, the Department, at the same time, overruled the decision in the Kerran case, whereby the double result was accomplished of making it possible for widows of Mexican war soldiers to obtain bounty land warrants where the soldiers had died after the act of March 3, 1855, and of condoning the carelessness or oversight, whichever it was, of the practice of the Bureau, extending over a period of more

312 than ten years, of allowing this class of cases contrary to law, as laid down in the Kerran case.

That we afterwards used our brief in the Thornton case in connection with other cases is no more evidence that we prepared it for the exploitation of our business than would the fact of any attorney-at-law using a brief in a given case in cases subsequently coming to his hands be evidence that he had prepared the brief in the first instance as a mere advertisement.

(3) The statement that the printer's bill for the brief in question was about equal to the fee that the claimant contracted to pay us was made in the honest belief that it was true. At the date of our letter of April 25, 1905, we had not received the bill and believed that it might amount to as much as Twenty Dollars. As the fee contracted to be paid was Twenty-five Dollars and our statement was that the bill was "*about* equal to the fee", it is respectfully submitted that any allegation that our conduct in this particular was improper, unprofessional or illegal is without justification.

II.

The Eaton Case.

The allegations in this case are as follows:

1. That, on April 11, 1905, we wrote to Henry Hollyday, Esquire, our correspondent in connection with the case, notifying him of the sending of a printed copy of our brief in the Thornton case, and forwarded the same, thereby applying the brief to the exact purpose to which we originally intended it; and

2. That, in our said letter of April 11, 1905, we made misleading and false statements with reference to the cost of that brief.

(1) It is true that we forwarded Mr. Hollyday a copy of our brief in the Thornton case; it is not true that, in so doing, we applied the brief to the purpose for which we originally intended it. We have above truthfully and candidly stated the reason for which we intended the brief, which was to overcome the adverse rulings in the Thornton case, the case in which it was filed; and we resent the charge, which we respectfully protest is both unwarranted and unworthy of the Bureau, that we prepared the brief for any other purpose. Having, in the course of preparation of the brief, fully informed ourselves as to the questions covered by it, and having put into the brief the fruits of our researches and labors, it was, we respectfully insist, entirely within the proprieties, and according to the practice of the most honorable attorneys, to utilize the same in any other cases in our hands to which it might be applied.

(2) As heretofore stated, we had not, on April 25, 1905, received the printer's bill for the brief in question and did not then know what its amount would be; accordingly, we were in equal ignorance at the date of our letter to Mr. Hollyday, namely, April 11, 1905. As respects the allegation that our statement to Mr. Hollyday as to the cost of the brief was false and misleading, we repeat what is hereinbefore said in connection with the Thornton case.

III.

The Hickman Case.

The allegations in this case are as follows:

(1) That we induced the claimant to assign her warrant to us for the sum of seventy-five dollars, at a time when its worth was not less than Seven Hundred Dollars; and

2. That, after originally agreeing to prosecute the claim for a fee of Twenty-five Dollars, we first offered the claimant Two Hundred Dollars for the warrant, if issued; subsequently offered her Three Hundred Dollars, subsequently, through our agent, secured her to scale the price to Two Hundred and Fifty Dollars; subsequently, through our agent, caused her to agree to sell the warrant for seventy-five Dollars; and, after the issue of the warrant, through our agent, induced her to assign the warrant to us in consideration of Seventy-five dollars; and paid to our agent the sum of Twenty-five Dollars for his services in that behalf.

(1) It is not alleged that, at the time the claimant assigned the warrant to us for Seventy-five Dollars, we knew that it was worth not less than Seven Hundred Dollars, and, in fact, it was not worth that sum; and, for the reasons hereinbefore referred to and herein-after appearing, the value of such warrants was so precarious that it would have been, and was, impossible for anyone certainly to know the value of the warrant when to be actually issued.

(2) It is true that we first, namely, on May 13, and September 15, 1904, offered Two Hundred Dollars for the warrant, if
315 issued; that we subsequently, on October 4, 1904, raised our offer to Three Hundred Dollars; that on December 23, 1904, we suggested to our correspondent a compromise on the question of price, and the claimant thereafter consented to accept Two Hundred and Fifty Dollars; that subsequently the claimant agreed to sell the warrant for Seventy-five Dollars, and afterwards assigned the same to us for that sum, and that we paid our correspondent Twenty-five Dollars for his services in the case.

Our relation to this case covered the period from May 13, 1904, to September 11, 1905, a period of one year and four months, lacking two days. The claim was rejected on March 11, 1905, and, on April 4, 1905, we appealed it to the Secretary of the Interior, and it was not finally allowed until August 28, 1905. In addition to the fact that the history of the case made it extremely problematical whether the warrant would ever be procured, we can but repeat what is hereinbefore said as to the precarious value generally of the warrants and recall our experience, hereinbefore referred to, of having them on our hands without a market.

IV.

The Pygall Case.

The allegations in this case are as follows:

1. That, on December 16, 1904, we wrote a letter to John S. Pygall, offering to try the case if the surviving heirs at law of the

original warrantee would sell us a duplicate of the warrant for One
Hundred Dollars cash, and that we would make no charge
316 for our services in prosecuting the case and would pay for
the necessary advertisements, well knowing that, if the duplicate warrant had been issued, we could have sold the same for not less than Four Hundred and Eighty Dollars;

2. That, in said letter, we made no statement whatever as to the actual value of said warrant, but, on the contrary, thereby attempted to enter into a champertous and illegal contract to pay the expenses incident to the prosecution of the claim and to absorb over three-fourths of the value of the warrant, if issued; and

3. That any written or oral contract which we may have entered into to that end is wholly void and is in violation of the provisions of Section 2436, R. S. U. S.

(1) For the reasons twice hereinbefore referred to, it was not possible for us to know, and we did not know, at the date of our letter of December 16, 1904, what would be the value of the warrant when to be issued.

(2) It is true that we did not, in the said letter, inform the claimant as to the actual value of the warrant, but it is equally true that we did not, at the time, know that value. We did not profess to fix any value on the warrant, unless our offer to purchase it at a set price may be construed as such attempt, and we did not profess to give any assurance as to its value, nor did we, by anything contained in the letter, endeavor to mislead the claimants as to any sources of information accessible as to the value of the warrant or to
say anything inviting them to rely upon our offer to the ex-
317 clusion of any inquiry or inquiries which they might see fit,
and which it was entirely within their power, to make in the premises.

As respects the allegation that we attempted to enter into a champertous and illegal contract in the premises, we do not admit that our letter is justly capable of any such construction. We were not undertaking to induce the claimants to *divide* the produce or fruits of our services, which is essential to champerty, but we frankly admit that we were endeavoring to buy, in advance, the subject of claim, and this, we submit, we might lawfully do against the whole world, except the claimants, whose privilege it was, in the end, to refuse to carry the bargain into effect. This consideration is involved in the third allegation, to which we pass.

(3) That any written or oral contract which we may have entered into the premises may have been void under Section 2436 R. S. U. S., may be admitted, but that it was *in violation* of that Section is respectfully denied, for the reason that that Section does not forbid such agreements; it only makes them void, and it has been so frequently adjudged that the invalidity of such and similar agreements is available only to the claimant; who may, or may not, insist upon such invalidity, that it seems necessary only to add that, as all persons are equally presumed to know the law, the claimants must be presumed to have known that, at the end of our labors and the rendition of our services in the premises, it remained for them, and

them only, to recognize or to repudiate any supposed obligation on their part in the premises.

318 As the Bureau must know, the facts in this case were most complicated, and the services to be rendered involved many and great difficulties. Under date of December 5, 1906, Pygall wrote us that he had received the duplicate land warrant from the Department, and offered to send the same to us for the agreed price of One Hundred Dollars. On receipt of his letter, we called at the Pension Bureau and learned, for the first time, that, on October 10, 1906, Order 85 had been issued, in accordance with which bounty-land warrants would be no longer delivered to anyone except the claimants, and we also learned, at the same time, that the Bureau did not look with favor upon the practice of attorneys buying warrants from their clients, or entering into agreements to buy warrants afterwards to be issued. We thereupon, on December 12, 1906, wrote and sent the following letter:

WASHINGTON, *December* 12, 1906.

Mr. John S. Pygall, Rosendale, Wis.

DEAR SIR: We have your favor of the 5th instant informing us that you have received from the Pension Bureau the duplicate bounty-land warrant which you made application for through us. You also say that you are now willing to carry out your agreement to sell it to us.

In reply we would say that when we entered into the agreement to purchase the warrant from you for a cash consideration we believed, and still believe, that we had, and that you had, a perfect right to do so, but we have recently learned that the Pension Bureau does not look with favor on transactions of the like, and, under the circumstances, we have concluded to ask that you make such disposition of the warrant as you see fit, and that you pay us our fee of Ten Dollars for having secured it for you.

In fact, we did not receive the warrant, and we did not receive our fee, and, ever since writing the said letter, we have lived up to the principle therein expressed and have wholly abandoned the field of dealing in land warrants. Had our agreement been carried
319 out, however, the claimant would have been greatly benefitted, by reason of the fact that, on January 31, 1907, the Secretary of the Interior, in the case of Lawrence W. Simpson, overruled the decision of February 5, 1902, in the case of Charles P. Maginnis, as to the location of land warrants, thereby making it difficult for any warrantee to dispose of his warrant at even seventy-five cents per acre. The offer, therefore, contained in our letter of December 16, 1904, for the warrant when issued proved to be more than a fair offer for the warrant, and is an apt illustration of the precarious value of such warrants, hereinbefore several times referred to.

V.

The Graves Case.

The allegations in this case are as follows:

1. That, on October 5, 1903, we filed an application for the issuance of a duplicate warrant, which was issued on April 27, 1904, and turned over to us on May 19, 1904, and that during the month of May, 1904, we induced the claimant to assign the warrant to us for the sum of One Hundred Dollars, and, on July 30, 1904, the warrant was sold, through William J. Johnson, of this city, to one Matthews for Three Hundred and Sixty-four Dollars and ninety cents; and

2. That the said Johnson after having had a conversation with us over the telephone, refused to testify with reference to the price paid by him for this and certain other warrants, basing his refusal on the alleged ground that he regarded that question as one requiring the disclosure of his private commercial transactions.

(1) It is true that we made the application stated and received an assignment of the said warrant for the sum of One Hundred Dollars. We have no knowledge as to the allegation that the said Johnson sold the warrant for the sum mentioned, except on information and belief, and, in selling the said warrant, the said Johnson was not acting for us in the transaction.

(2) As to Mr. Johnson's refusal to testify, as alleged, the fact is that Mr. Johnson did call on us by telephone, stating to Mr. Harney, who answered the call, that a special examiner was at his, Johnson's office and desired to take his deposition with respect to certain land warrants that we had sold him, and also as to the price he paid us for the same. Mr. Harney informed Mr. Johnson that he was at liberty, so far as our firm was concerned, to give the information, and also informed Mr. Johnson that the firm would give the information to the special examiner himself, if he would call at our office. Mr. Johnson's refusal to give the information was on his own responsibility and not because of any advice, request, or suggestion whatever from us, or either of us, and it is believed that Mr. Johnson will so testify, if requested to do so.

VI.

The Monaghan Case.

The allegations in this case are as follows:

321 1. That we prosecuted the claim to a successful issue, were certified a fee of Twenty-five Dollars for our services in that behalf, the warrant was issued on July 7, 1905, and delivered to us on the 24th of that month; on August 7, 1905, we induced the claimant to assign the warrant to Mr. Harney for the sum of Two Hundred Dollars, and the warrant was sold to one Abbott by one Fennell, of this city, for Seven Hundred and Twenty Dollars.

It is true that the warrant in this case was purchased by us for the sum of Two Hundred Dollars, but we had no relation whatever to the sale thereof to Abbott by Fennell.

VII.

The McKean Case.

The allegations in this case are as follows:

That we filed the application, entered into an agreement, by virtue of which the warrant, if issued, was to be assigned to us. The warrant was issued on December 1, 1905, and turned over to us February 7, 1906, we having been certified a fee of Ten Dollars for services rendered in the prosecution of the claim, and, on February 13, 1906, the warrant was assigned to Mr. Harney and, on February 21, 1906, sold by us for the sum of Two Hundred and Forty Dollars.

These allegations are true, except that we waived our fee of Ten Dollars and made no attempt to collect the same.

322

VIII.

The Reddick Case.

The allegations in this case are as follows:

That we filed the application and duplicate articles of agreement in connection with the claim; the warrant was delivered to us on September 11, 1905; on September 16, 1905, we induced the claimant, for the sum of Two Hundred Dollars, to assign the warrant to Mr. Harney, and the warrant was sold to one Abbott by one Fennell for Seven Hundred and Twenty Dollars on September 19, 1905.

This warrant was purchased by us for the sum of Two Hundred Dollars; we received no fee; and there were some expenses incidental to the purchase of the warrant. We had no relation to the alleged sale to Abbott by Fennell, and the same was not made on our account.

IX.

The Shirkey Case.

The allegations in this case are that we filed the application, prosecuted the claim to a successful issue; the warrant was delivered to us on September 30, 1904; we induced the claimant to assign the same to Mr. Stevens, on March 23, 1905, in consideration of One Hundred and Fifty Dollars; on April 25, 1905, we sold the warrant for Four Hundred and Thirty-two Dollars, and the warrant was thereafter sold to one Hollcroft for the sum of Five Hundred and Forty Dollars.

323

We admit these allegations, except we say that we received no fee in the case; we paid other counsel for their services in connection therewith, and we had nothing to do with, and no relation to, the sale to Hollcroft.

X.

The Additional Cases.

The allegations in these cases are that, upon the issue of the warrants, we induced the claimants to assign the same to us, upon the payment of the smallest sums for which the claimants could be in-

duced to part therewith, and we sold the warrants to warrant dealers at the highest prices which we were able to obtain—this in violation of the provisions of Sections 3 and 4 of the Act of July 4, 1884, and in violation of our professional duty to the claimants.

We admit that we purchased the warrants in these cases, but, in each instance, for a sum agreed to by the claimants; and we admit that we sold the warrants at the best prices which we could obtain, but we deny that, in so doing, we violated any of the provisions of Sections 3 and 4 of the Act of July 4, 1884.

These Sections of the Act mentioned prohibit the demanding or receiving of compensation for *services in procuring* land warrants, otherwise than in accordance with the provisions of the Sections. In no instance did we demand or receive any compensation for our

324 services in excess of that fixed by the law; in every instance we bargained for the purchase of the warrants and none of the claimants in these, or any of the other cases, could possibly have understood otherwise. We admit that our agreements were of the nature contemplated by Section 2436 R. S. U. S., but, as hereinbefore stated, that Section does not prohibit such agreements, but merely renders them void to the extent, and in the sense, that it was the privilege of the claimants at any time to repudiate the agreements, and we were powerless to enforce them against the claimants should they set up their invalidity. To what extent our action in the premises may be deemed reprehensible, or the severe punishment threatened us be justifiable, we consider hereinafter.

The Bureau, in its letter, charges us with improper, unprofessional and illegal conduct in the following words:

“As the attorneys of record, it was your duty to have promptly turned the warrants over to your client, and if it was your desire to purchase the same, to have made full disclosures to each client as to all the facts concerning the value of his warrant which might influence him in determining the question of sale. You failed to so deliver any warrant, and failed to make any disclosure whatever as to the value thereof, but, on the contrary, induced each of said clients to assign to you the warrant you had secured to be issued, by offering an inadequate price therefor and by concealing from your client the market value of his warrant.

You filed duplicate articles of agreement as provided by the act of July 4, 1884, in various cases, as above stated, stipulating therein that you would endeavor to the best of your ability to faithfully represent the interests of your clients and would prosecute their claims in consideration of a fee of \$25, when as you well knew, it was not your intention to collect a legal fee for your services, but to indirectly obtain greater compensation than is provided by said act, by procuring the warrants at not over \$1.25 per acre, through taking advantage of the lack of knowledge of your clients in such matters, and by selling such warrants at their market value, this in violation of the provisions of sections 3 and 4, of said act, and in violation of the confidence of your said clients and of your professional duty in the premises.

325 In filing such articles of agreement, when it was not your intention to comply therewith, you intended to, and did for the time being, deceive this Bureau in the premises.

* * * * *

You, and each of you, have sacrificed the interests of your said clients, in the manner set forth above, to the sole end that you might procure sums of money to which you had, and have, no legal right and title."

By way of preliminary to the reply to these averments, hereinafter appearing, we beg to suggest that the following considerations should have earnest and impartial attention.

The present firm of Milo B. Stevens & Co. is composed of ourselves and the estate of its founder, Milo B. Stevens, father of the present senior member, which estate holds over a third interest in the business, and the owners and beneficiaries of that interest are the widow and minor daughter of Mr. Stevens. In the course of the firm's transactions, it has taken over the business of a number of concerns handling pension and miscellaneous claims, including most recently those of George E. Lemon, Alexander M. Kenaday, and Ada C. Sweet. The business of the firm has, therefore, for some years, been in effect the consolidated business of several offices, having to do with pension and miscellaneous claims, and the ramifications of the firm have been proportionately numerous and extensive, including a large practice before the U. S. Patent Office; and, since the death of Mr. Milo B. Stevens in 1896, the details of the business have had the exclusive attention of ourselves, the undersigned, and the widow and daughter mentioned have had no concern nor relation of what kind soever therewith or thereto.

326 The firm was drawn into the business of procuring and speculating in bounty-land warrants through clients and correspondents belonging to the pension branch of its business, clients and correspondents with whom the firm had, for various periods, dealings relating to the procurement of pensions and whose relations to the firm antedated, by greater or less periods of time, any transaction of the firm in bounty-land warrants. This business came to the firm as a natural incident of its pension business, and the firm, through the undersigned, drifted into speculative dealing in land warrants as a side issue, not covered by the articles of partnership nor within contemplation thereof.

The firm's transactions in bounty-land warrants began in the year 1902 and, from and including that year, to and including the year 1906, our transactions with clients were only thirty-seven in all. Of these, twenty-six cases were developed from our connection with pension cases, and the remaining eleven were developed through correspondence with attorneys and others. Of our clients for whom we secured warrants, fifteen either retained the same or sold them to others, and we bought the remaining twenty-two of the thirty-seven warrants procured. Of these twenty-two cases in which we bought the warrants, eleven were of pension clients of ours and the other eleven were of clients who employed us to secure the warrants.

Out of the first fifteen cases mentioned, one was that of Pygall, whose warrant we declined to take after learning that the Bureau did not look with favor on the purchase by attorneys of warrants from their bounty-land clients, and, as already stated, since our so learning we have entirely abandoned the dealing in land warrants.

When we entered the field of procuring these warrants, we found an established practice, of many years standing, as we believe, of attorneys dealing in warrants of their own procurement, which practice we had reason to believe, and believed, was with the full knowledge of the Bureau, and which not only was not the subject of any rule, but which, also, had not been made the subject of any criticism by the Bureau, according to either our knowledge or surmise. Moreover, throughout our transactions in the premises, we had a representative in daily contact with the Bureau, and no intimation, direct or indirect, was ever made to either such representative or ourselves of any suspicion of impropriety in the prevalent practice. As already stated, in the fall of 1906, we first learned of the discountenance by the Bureau of the practice, and immediately abandoned it, as is evidenced by our action in the Pygall case, above related.

Moreover, by reason of the fact that the value of such warrants for location was dependent upon the Department's decision in the Maginnis case, and of our knowledge and that of the agents and attorneys in general dealing in such matters that the decision might at any time be modified or over-ruled, we were fully aware that anything approaching certainty in the value of the warrants was problematical and temporary; and, by reason of the further fact that in undertaking to dispose of the warrants to third persons we would be, and were, obliged to assume all the risks hereinbefore mentioned, we considered the warrants as of precarious value, as in fact they were; and our contemplation of the fate of the Maginnis decision was realized in the decision in the Simpson case, limiting the location of the warrants to what it was before the Maginnis decision, before which time even, as above stated, we had, at times, on our hands warrants of which we could not dispose, and for which we had not even offers. All of these facts, well known to us, made our dealing in the warrants a manifest venture, and had any of our clients, before agreeing to deal with us in respect of assigning the warrants, made inquiry of us, all of the foregoing facts would have been communicated to such, with the probable, if not inevitable, result of inducing a willingness on the part of the applicants in many instances to dispose of their warrants at even less than the sums for which they agreed to sell them.

Having these considerations in view, we reply to the several specific charges above quoted, as follows:

1. For the reasons appearing, it was impossible to disclose to any client the value of his warrant further than to quote the latest price of which we knew, and, in so doing, justice to ourselves would have required the communication, at the same time, of the foregoing considerations, at the risk of appearing to attempt to mislead the client and to beat him down in his price, which would have put us in a

situation more awkward, in our judgment, than the one we are now facing. This, at the same time, answers the charge that it was our duty to make full disclosures to each client as to all the facts concerning the value of his warrant which might influence him
329 in determining the question of sale, for the obvious reason that so to have done would have rendered us subject to the imputation indicated; and whether the substitution by any attorney of his position as such by the position of a bargainer for the subject of controversy requires the attorney to undertake to lay before his client all the facts which he thinks pertinent, at the imminent risk of unintentionally omitting what to others might seem pertinent, and thereby bringing himself under reprobation, is among the nicest questions in professional dealings and ethics, and one which no attorney, with any regard for either appearances or consequences, would be wise in assuming. The other question, how far a client approached by his attorney as a possible vendor of the subject of employment is subject to the rule that every intending vendor and every intending purchaser are expected and assumed to deal with one another at arm's length, is another nice question, the discussion of which we do not think necessary in the premises. As respects the charge that we did not turn the warrants over to our clients, it should suffice to say that the relation of purchaser on our part having been assumed, whether wisely or unwisely, commendably, or otherwise, put the delivery of the warrants to the client manifestly out of contemplation.

(2) It is not true that, at the time of filing the articles of agreement in any case, it was not our intention to collect a legal fee for our services but to obtain, indirectly, greater compensation than is provided by law. It was our original and honest intention to live
330 up to our agreements of employment if our clients did not change our relation from that of attorney to that of intending purchaser. Had our proposition to purchase in any case been declined, we would have lived up to both the letter and the spirit of our contract of employment and gone on with our work as attorneys to the end. The suggestion that we were taking advantage of the lack of knowledge of our clients in such matters is met by what is hereinbefore said in reply to the immediately preceding charge and otherwise hereinbefore in relation to the provisions of Sections 3 and 4 of the act of 1884; so much so that we hardly deem it necessary to add that it is not charged or intimated, and it is not true, that we have been guilty of the only thing in respect of which reprobation may justly be visited upon an attorney dealing with his client in respect of the purchase of the subject of his services, namely, the taking advantage of the client by either misleading him by affirmative statements or throwing him off his guard by concealing from him, or turning him away from, available sources of information to which he might resort to his advantage.

3. We submit that the charge that, in filing our articles of agreement, we intended, and did, for the time being, deceive the Bureau, is wholly untenable. The only thing which it was the province of the Bureau to inquire, or which it was interested in knowing

in the premises, was, whether, in appearing as attorneys for applicants, we had the right so to do and were in a position to make good our undertaking in the premises. Had the ultimate disposition of the warrants, after being legally procured, could
 331 be any affair of the Bureau, and how, in the premises, the Bureau could be deceived, we respectfully protest our inability to appreciate.

4. The charge that we have sacrificed the interests of our clients to the sole end that we might secure sums of money to which we have, and had, no legal right and title, is abundantly answered by what is hereinbefore said.

But further meeting this charge, we beg to add that, since our attention was attracted in 1906 to the discountenance by the Bureau of the practice mentioned, we have frankly realized that a nicer consideration and appreciation of our situation in dealing with these cases would have prevented our falling into the practice in question, and, in attestation of this, we have of our own motion, and without any outside intimation, advice or suggestion whatsoever of the necessity or propriety of so doing, and without any request on the part of our clients, returned to each and every one of them the financial advantage accruing to us, not only in the cases under consideration, but also in all other cases in which we purchased a bounty-land warrant in the procurement of the issuance of which we had acted as attorney or agent for the warrantee. We submit herewith, and ask to have taken as part hereof, a copy of the circular letter which, *mutatis mutandis*, we have addressed to each of our clients, each of which was accompanied by the certified check therein referred to.

Respectfully submitted,
 (Signed)

EUGENE E. STEVENS.
 THOMAS R. HARNEY.

332 DISTRICT OF COLUMBIA, ss:

Before me, a Notary Public in and for the District aforesaid, personally appeared Eugene E. Stevens and Thomas R. Harney, who, and each of them, being by me first duly sworn, depose and say that they have read the foregoing answer by them subscribed and know the contents thereof, and that the matters and things therein stated of their own knowledge are true and those stated on their information and belief they believe to be true.

(Signed)

EUGENE E. STEVENS.
 THOMAS R. HARNEY.

Subscribed and sworn to before me this 21st day of May, A. D. 1907.

(Signed)
 [SEAL.]

FRANK D. FAWCETT,
Notary Public, D. C.

333 "Office of Milo B. Stevens & Company, Solicitors of Claims and Patents, Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

AW.

WASHINGTON, D. C., *May* 10, 1907.

Mr. ———.

DEAR —: Sometime since, we bought from you a bounty land warrant of — acres for which we paid you \$—, the price mutually agreed upon, and, in so doing, we believed that we were acting within our rights, notwithstanding that, following a practice of long standing, we ourselves rendered the necessary services in securing the issue of the warrant.

The Bureau of Pensions has recently expressed its disapproval of attorneys dealing in land warrants of their own procurement for their clients, and, waiving all question of the justice of the position of the Bureau in the premises, we are unwilling to rest under that judgment. We have accordingly decided, voluntarily, to remit to you the difference between the price at which we disposed of the warrant and that we paid you for it, less our fee for securing it.

We do not feel it necessary to discuss the propriety or impropriety of the practice in question, but will say that it existed for some years without objection, or, so far as we know, even official comment. In view of the risks assumed by those dealing in land warrants during the period covering our transaction with you, and the necessity of guaranteeing to the person to whom we sold it the validity of each warrant in respect of any possible flaw in the title thereto, or of any possible error in the issuance of the warrant, or of any possible refusal of its acceptance by the General Land Office, and, in view of the further fact that the value of land warrants depending, as it did, upon a departmental decision of February, 1902, subject to review and reversal, dealing in such warrants was clearly so speculative as to make it hazardous, and to justify the effort to obtain the same from warrantees on the best terms acceptable to them. In verification of this, we need only call your attention to the fact that, since our transaction with you, a departmental decision of January, 1907, has wholly taken away from such warrants a possible value which they formerly had, depending upon the prior departmental decision, and that, under existing conditions, your warrant, if now in your possession, would be of far less value to you than even the amount which you received for it.

As early as November, last, for the reason first stated,
334 namely, the discountenance by the Bureau of Pensions of the practice mentioned, we abandoned this field, and have since had no dealings, actual or attempted, in warrants. In consummation of our purpose to give each of our clients the benefit of our prior dealings in that behalf, we are sending a similar communication to each, and we submit herewith a statement of the account between you and us, as it appears from our records and recollection, and, in accordance therewith, enclose our certified check, for which please sign and return the accompanying receipt. Should your understanding of the account be different from ours, we shall be pleased

to hear from you at your early convenience, and, if possible, by return mail.

Very respectfully,

335 In the Department of the Interior, Bureau of Pensions.

In the Matter of MILO B. STEVENS & COMPANY.

To the Honorable the Commissioner of Pensions.

SIR: I have the honor herewith to submit, in response to your suggestion in that behalf, the evidence in support of certain allegations heretofore made by Messrs. Eugene E. Stevens and Thomas R. Harney to your citation upon them of the thirteenth day of April last, calling upon them to show cause why it should not be recommended to the Secretary of the Interior that each of them be disbarred from practice before the Pension Bureau.

Premising that your suggestion is in reversal of the general, and indeed universal, rule that every one accused of an offense is presumed to be innocent until the contrary be made to appear, that the burden of establishing any accusation is upon the accuser, and that the accused is under no obligation, either legal or moral, to support allegations responsive to the matters charged until some evidence to the contrary has been presented, I present for your consideration what is hereinafter set forth.

Your suggestion does not point to the particular allegations of the answer in respect of which evidence is desired, and I am, therefore, under the necessity of collecting from the answer, in the
336 light of the citation, the matters respecting which support by evidence is supposed to be desired and available. Should it be found that I am, in any particular, mistaken and that there is any other allegation in the answer than those mentioned by me respecting which evidence is desired, I will thank you to indicate the same and will gladly submit any further evidence possible in the premises.

The allegations of the answer, to which I assume your suggestion to apply, are ten in number, as follows:—

1. That when Messrs. Stevens & Company wrote the letter of May 12, 1904, in the Thornton case they did not know that if they then had the warrant they could have sold the same for not less than three dollars per acre, but that, as matter of fact, they had, at that time, several warrants for sale, some of which they had had for several months and could not obtain a purchaser therefor, although they were offered for sale to various brokers in this City;

2. That, at the date of their letter of December 16, 1904, in the Pygall case, Messrs. Stevens & Company did not know what would be the value of the warrant when to be issued;

3. That in selling the warrant in the Graves case the certain Johnston mentioned in the citation was not acting for Messrs. Stevens & Company in the transaction, and that as to the said Johnston's refusal to testify he was informed that he was at liberty, so far

as the firm was concerned, to give the desired information, and that his refusal to give the same was on his own responsibility, and not because of any advice, request or suggestion whatever from the firm, or any member thereof;

337 4. That the firm had no relation to the sales of the warrants by one Fennell to one Abbott, in the Monaghan and Reddick cases;

5. That the business of dealing in land warrants came to the firm as a natural incident of its pension business; and that the firm's transactions with clients in dealing in bounty land warrants were only thirty-seven in all, of which twenty-six were developed from the firm's connection with pension cases, and the remaining eleven through correspondence with attorneys and others;

6. That of the firm's clients for whom it secured warrants fifteen either retained the same or sold them to others, and the firm bought the remaining twenty-two of the thirty-seven warrants procured;

7. That of the twenty-two cases in which the firm bought the warrants eleven were of pension clients of the firm, and the others were of clients who employed the firm to secure the warrants:

8. That, in the Pygall case, the firm declined to take the warrant after learning that the Bureau did not look with favor on attorneys purchasing bounty land warrants of their own procurement, and that, since so learning, the firm entirely abandoned dealing in land warrants;

9. That, when the firm entered the field of procuring these warrants, it found an established practice of attorneys dealing in warrants of their own procurement, which practice the firm had reason to believe, and believed, was with the full knowledge of the Bureau, and which, not only was not the subject of any rule, but which also had not been the subject of any criticism by the Bureau, according to either the knowledge or surmise of the firm, or any member thereof; and

338 10. That the firm has returned to each and every of its clients the financial advantage accruing to it through dealing in the warrants, not only in the cases under consideration, but also in all other cases in which the firm purchased land warrants in the procurement of the issuance of which it had acted as agent or attorney.

I deal with the evidence in support of these allegations in their order.

1. On May 12, 1904, the date of the letter in the Thornton case, neither Messrs. Stevens & Company, nor anyone else, could know the value of any given warrant, for the reasons set forth in the answer at, among other places, pages 21 and 22, and the further reason that during the year 1904, there was practically no demand for such warrants and they were a drug on the market; and that the firm did not know that if, at that date, it then had the Thornton warrant it could have sold the same for not less than three dollars per acre, and that, as matter of fact, the firm had, at that time, several warrants for sale, some of which it had had for several months and could not obtain a purchaser therefor, notwithstanding offers for sale to various brokers in this City, is conclusively established by the fact that, on the date named, the firm had in its possession six warrants purchased at various dates from Feb-

ruary 4, to May 11, 1904, all of which were for sale and offered for sale without obtaining a customer, until July 26, 1904, more than two months after the date of the letter, they were all sold to Mr. F. W. McReynolds, of this City, at a price less than three dollars, namely, two dollars and ninety-one cents, per acre. Mr. McReynolds, as I learn through a family connection, and otherwise, is absent from the city and not expected to return before the end of July, at the earliest. His office is in the Fendall Building this City, and he is well known as a dealer in warrants and scrip, and, although absent from the city, I have no doubt is accessible by correspondence, and the Bureau may easily verify through him the statement here made. In addition, the statement is supported by the affidavits of Emily F. Camp, Annie R. Walton, Frank D. Fawcett, Homer Guerry and Henry N. Copp, herewith filed.

2. That, at the date of the firm's letter of December 16, 1904, in the Pygall case, it did not know what would be the value of the warrant when to be issued is established by what has just been said in relation to the Thornton case; in addition to which, the Pygall case was for a duplicate warrant involving the familiar difficulties as to getting the assignments of interest of all heirs and legal representatives and the incident expenses of so doing, wholly impossible of calculation in advance.

3. That, in selling the warrant in the Graves case, Mr. Johnston was not acting for the firm, and that as to his refusal to testify he was at liberty, so far as the firm was concerned, to give the desired information, and his refusal was on his own responsibility exclusively, is established by the firm's answer to this effect, under oath, and Mr. Johnston's affidavit herewith filed.

4. That the firm had no relation to the sales of the warrants by Fennell to Abbott in the Monaghan and Reddick cases appears from the fact that the warrants passed out of the firm's possession by sale to Messrs. Spalding & Sons on September 26, 1905, as is shown by the affidavits of Miss Camp and Mr. Fawcett, heretofore mentioned. Mr. Fennell has an office at 13th and G Streets, northwest, this City, and, although personally unknown to any member of the firm, is assumed to be known and accessible to the Bureau, or some of its officers.

5. That the business of dealing in land warrants came to the firm as a natural incident of its pension business, and that its transactions with clients in dealing in warrants were, in all, thirty-seven, of which twenty-six were developed from the firm's connection with pension cases, and the remaining eleven through correspondence with attorneys and others, and that, in no single instance, was any dealing with a warrant had through or upon information obtained from the land office is shown by "Exhibit Bounty Land Cases," herewith filed, and the affidavits of Miss Camp, Miss Walton and Mr. Fawcett. This exhibit gives the record in detail as to each of the land warrants dealt in by the firm, and completely refutes any suggestion that the business of dealing in them came about in any other manner than as stated in the answer.

6. That of the firm's clients for whom it secured warrants, fifteen

either retained the same or sold them to others is also established by the affidavits just mentioned.

7. That of the twenty-two cases in which the firm bought the warrants, eleven were of pension clients of the firm, and the others of clients who employed the firm to secure the warrants, is shown by the affidavits of Miss Camp and Mr. Fawcett, and by the records of your Bureau, accessible to you.

8. That, in the Pygall case, the firm, as far back as December 12, 1906, and four months before the citation upon it, declined to take the warrant after learning that the Bureau did not look with favor on attorneys purchasing bounty land warrants of their own procurement, and so declined for that reason, and that since so learning the firm has abandoned dealing in land warrants is shown by "Exhibit Pygall," consisting of three original letters of Pygall and a copy of the firm's letter to him conveying the declination, and the affidavits of Miss Camp, Miss Walton and Mr. Fawcett.

9. That, when the firm entered the field of procuring these warrants, it found an established practice of attorneys dealing in warrants of their own procurement, which practice it had reason to believe, and believed, was with the full knowledge of the Bureau and which, not only was not the subject of any rule, but which also had not been the subject of any criticism by the Bureau, according to either the firm's knowledge or its surmise, is shown by the firm's answer to the citation and the affidavits of Messrs. Guerry, Johnston, Copp and Fawcett.

In this connection, you are especially asked to note that the allegation of the answer (page 21). is not that you personally are responsible for this practice, or that you first approved, and afterwards disapproved, it, but that, when the firm entered upon the practice, which was in 1902, some three years before your assuming office, it found the practice then already of many years standing, and that the first disapproval of it was by you in the latter part of 1906. The answer, accordingly, instead of charging you with any blame for the practice, in fact absolves you from such and gives to you the credit attaching to its discontinuance. The affidavits submitted show the practice to have been of quite thirty years' standing before your disapproval of it, and if the firm's answer and the affidavits mentioned are not deemed sufficient to establish the fact of the long continuance of the practice with the knowledge of the Pension Bureau and its officers, you are respectfully invited to examine the officers of your Bureau on the subject, among them, Mr. Charles M. Bryant, Chief of the old War and Navy Division; Doctor William L. Chamberlain, Assistant Chief of the same division; and Mr. James L. Davenport, First Deputy Commissioner of Pensions.

10. That the firm has returned to each and every of its clients the financial advantage accruing to it through dealing in the warrants, not only in the cases under consideration, but also in all other cases in which the firm purchased land warrants in the procurement of the issuance of which it had acted as attorney or agent is shown by "Exhibit Refund," herewith filed, the affidavit

of Miss Camp, and the receipts of the several clients, also herewith filed.

The evidence thus submitted shows that voluntarily the firm has repaid to its clients sums aggregating nearly Seven thousand dollars, an action which suggests itself to me as an example worthy of emulation rather than an artifice calling for rebuke.

In submitting this matter for your final consideration and action, upon the accompanying evidence and the answer heretofore filed, I beg leave to avail myself of the occasion, although strictly not within the limits of the extension which you have so considerately granted me, and for which I beg you to accept the expression of my high appreciation, to say that I feel that it will not be amiss to ask your attention to the fact that, under whatever criticism other attorneys may properly rest in the particulars indicated, it cannot truthfully be charged upon Messrs. Stevens & Company either that they obtained through the Land Office the names of the clients for whom they acted, or that they were the beneficiaries of any "leak" in that or any other office. The "Exhibit Bounty Cases" establishes this beyond all doubt, even without the aid of the affidavits bearing upon the point; and I feel that I may properly repeat what is above said, namely, that it is not your administration of the Bureau of

344 Pensions that has been charged, either directly or indirectly, with first an approval, and afterwards, a disapproval, of the practice under consideration. You will note, also, that although Messrs. Stevens & Company were cited in but twelve cases, they have, in fact, made restitution in all of the twenty-two cases in which they followed the practice mentioned, and that, at the time of so doing, they had every reason to believe, and did believe, that their case would be considered upon the twelve cases only.

These considerations thus briefly stated; the perfect candor of Messrs. Stevens and Harney in their answer to the citation; the long good standing of the firm and the respectability of its members; the fact that a more than one-third interest in the business is owned by the widow and minor daughter of its founder, who have had no active participation in its affairs and were utterly ignorant of the transactions brought under criticism; the fact that restitution has been made under conditions rendering any successful claim for such by the warrantees highly problematical, to say the least; and other considerations, not deemed necessary to be here set forth, conduce to the conviction on my part that the fair and just examination and treatment of the case which I know it will have at your hands will lead you to the judgment that the harsh penalty with which the parties are threatened is unmerited and ought not to be imposed. You have personally told me that it is not punishment that you are seeking, so much as the breaking up of the practice under criticism, and as, in this case, in advance of your own movement in the matter, the parties, of their own motion, brought about the result which

345 you have declared to be your aim, I assume to express the opinion that the incident, so far as these gentlemen are concerned, might properly be announced closed, with whatever appropriate comment upon their action heretofore the situation may

seem to you to call for, regard being had to your very proper desire to keep the practitioners before your Bureau above even suspicion.

Respectfully submitted,
(Signed)

HENRY E. DAVIS,
Attorney for Milo B. Stevens and Company.

346

Affidavit of Emily F. Camp.

DISTRICT OF COLUMBIA, ss:

Before me, a Notary Public in and for the District aforesaid, personally appeared Emily F. Camp, who, being by me first duly sworn, deposes and says:

I have been in the employ of the firm of Milo B. Stevens & Company since the year 1879, and, since April, 1897, have been, and now am, the cashier and bookkeeper of the said firm, and, as such, I have knowledge of the purchase by the firm of military bounty land warrants, the sale of said warrants, and the expenses incident thereto, all of which appear of record in the books of the firm. Of my own knowledge, and also from the said books, which I have examined for the purposes of this affidavit, I know that on May 12, 1904, the firm had on hand, unsold, the following military bounty land warrants, namely,

Frances Williams,	purchased	February 4,	1904;
George Bull,	"	"	11, 1904;
Eliza Cannon	"	April 2,	1904;
Robert Clark	"	"	12, 1904;
Jane Hollenbeck	"	"	15, 1904; and
Henry W. Fitzgerald	"	May 11,	1904;

To the best of my recollection and knowledge, the reason that the aforesaid warrants were, at the date mentioned, in the possession of the firm and had not been sold by it, was because a purchaser therefor could not be obtained, and the firm could not, and did not, find a purchaser for said warrants until July 26, 1904, when, according

347 to the records of the office which were made by me at that date, they were sold to F. W. McReynolds, Esquire, a scrip dealer in the City of Washington, District of Columbia, and the price obtained therefor was less than three dollars, or, to be exact, two dollars and ninety-one cents, per acre.

From a careful examination of the records of the firm covering the entire time I have been its cashier and bookkeeper, I find that the firm successfully prosecuted only thirty-seven bounty land warrant applications, and, out of the total number, the firm purchased twenty-two, the remaining fifteen applicants having retained their warrants or disposed of them to others than the firm, or any member thereof. It is also within my personal knowledge, as well as being a matter of record in the books of the firm, that on May 10, 1907, the firm sent, by certified cheque, to each and every one of the twenty-two persons from whom it had purchased bounty land warrants, in which the firm had acted as attorneys in the procurement

thereof, the full amount received by the firm from the sale of the said warrants, less the amount originally paid the warrantees by the firm, and less the attorneys' fees for securing the same. I have examined the receipts from twenty-one of those to whom the certified cheques were sent, and have carefully compared the statement contained in each receipt as to the amount that the firm originally paid the warrantee, the amount received by the firm from the sale of the warrant, the amount of the attorneys' fee, and the amount refunded by certified cheque, and the same is, in each case, correct and true. The only warrantee who has not returned the receipt for the certified

cheque sent is Elvira E. Graves, but the firm has received an
 348 acknowledgment, under date of May 16, 1907, of the statement in her case and of the cheque sent her, which said acknowledgment and the receipts in the other cases are submitted with the statement of counsel for the said firm of Milo B. Stevens and Company, which this, my affidavit, accompanies.

I also know it to be the fact, as appears from the records of the said firm, that the warrants in the Monaghan and Reddick cases were sold by the firm on September 26, 1905, to Messrs. Spalding & Sons, and the said records do not show that the said firm had any relation to either the sale or purchase of the said warrants, or either of them, by the certain Fennell, or the certain Abbott, mentioned in the letter of the Commissioner of Pensions, of April 13, 1907, citing Messrs. Stevens and Harney, of the said firm, to show cause why they should not be recommended for disbarment; and, prior to the date of the said letter, I never heard of either the said Fennell or the said Abbott in connection with either of the said warrants.

(Signed)

EMILY F. CAMP.

Subscribed and sworn to before me, this 24th day of June, A. D. 1907.

(Signed)

EDWARD B. KIMBALL.

[SEAL.]

Notary Public, D. C.

349

Affidavit of Annie R. Walton.

DISTRICT OF COLUMBIA, ss:

Before me, a Notary Public in and for the District aforesaid, personally appeared Annie R. Walton, who, being by me first duly sworn, deposes and says:

With the exception of the three years from 1893 to 1896, I have been in the employ of the firm of Messrs. Milo B. Stevens & Company since 1890, and am now, and continuously since the year 1898, have been, assistant cashier and bookkeeper of the said firm, and, as such, have knowledge of the purchase by the said firm of military bounty land warrants, the sale of the said warrants, and the expenses incident thereto, all of which appear of record in the books of the firm.

I have read the affidavit of Emily F. Camp, to be filed herewith, and know the contents thereof, and know that the matters and things therein stated, as the same appear from the books and records of the said firm, are true as therein stated.

(Signed)

ANNIE R. WALTON.

Subscribed and sworn to before me this 24th day of June, A. D. 1907.

(Signed)
[SEAL.]

EDWARD B. KIMBALL,
Notary Public, D. C.

350

Affidavit of Frank D. Fawcett.

DISTRICT OF COLUMBIA, ss:

Before me, a Notary Public, in and for the District aforesaid, personally appeared Frank D. Fawcett, who, being by me first duly sworn, deposes and says:

I have been in the employ of the firm of Milo B. Stevens & Company since July 23, 1897. On July 17, 1900, I was made the firm's acting chief clerk, and, in May, 1902, I was appointed, and since have been, and now am, chief clerk of its Washington office. As such chief clerk, I have, since my said appointment, had under my personal supervision the filing and prosecution of applications for bounty land warrants, and am familiar with the methods of the firm and know the sources from which this class of its business has been derived. This I know of my own personal knowledge, as I have been in personal charge of these matters.

Between May, 1902, and December, 1906, the firm successfully prosecuted only thirty-seven applications for bounty land warrants, of which the firm purchased twenty-two, and the remaining fifteen were either retained by the applicants or sold by them to others. I have examined "Exhibit Refund," and its several parts, numbered I, II, III and IV, which are to be filed herewith, and, from my personal knowledge and the records of the said firm respecting the same, they are true and correct, to the best of my knowledge and belief.

On June 8, 1901, the Honorable Secretary of the Interior in the case of Robert Markwood (11 P. D., pp. 380-7), overturned
351 the practice that had existed in the Pension Bureau since the passage of the act of January 5, 1893, in the matter of the proper date of commencement of the increase of pension authorized by said act. During said period the practice was governed by Order 231 of the Commissioner of Pensions, dated July 6, 1893. The order was as follows:

"The date of commencement in Mexican war claims for increase under the act of January 5, 1893, shall in each case be the day on which the case is legally approved for admission by the Board of Review."

In the Markwood decision the Honorable Secretary of the Interior held, in effect, that every soldier or sailor who had his pension increased under the act of January 5, 1893, between January 5, 1893, and June 8, 1901, the date of the decision, was entitled to a rerating of his pension back either to the date of the act, January 5, 1893, or back to whatever date subsequent to the act he could show by proof that the conditions of disability and destitution, referred to in the act, commenced to exist and continued. Under this decision there were several thousand who became entitled to have their pensions

rerated and in view of this decision the firm filed, between the year 1901, and December 31, 1906, 3547 claims for (1), rerating and (2), increase of pension. During the same period the firm also filed 708 applications for original pensions for (3), Indian war survivors and widows, and (4), Mexican war widows, making a grand total of the four classes of 4255 cases.

The firm, on the death of Alexander M. Kenaday on March 25, 1897, became his successors. He was also secretary of the National Association of Veterans of the Mexican War, and on purchasing his pension claims business the firm secured a large number of Mexican war increase cases, and several thousand names and addresses of Mexican war survivors and widows. As Mr. Kenaday had secured an increase of pension under the act of January 5, 1893, for a large number of survivors, the firm was thus enabled to obtain a large number of applications for rerating of pension. While actively engaged in the prosecution of this class of pension claims, as well as its other pension and miscellaneous war claims business, the Honorable Secretary of the Interior, on February 5, 1902, rendered a decision in the land case of Charles P. Maginnis (Vol. 31, Public Land Decisions, p. 222), of considerable importance to owners of, or persons having title to, bounty land warrants. This decision overturned the practice that had existed in the General Land Office since the passage of the act of March 2, 1889—a period of about thirteen years—in the matter of the location and use of bounty land warrants. This decision had the effect of giving said warrants a temporary speculative value. The result was that considerable activity was shown by scrip dealers and others in the matter of trying to purchase bounty land warrants. During this activity, the firm appeared as the attorneys of record before the Pension Bureau between 1901 and 1906, as before stated, in over 4000 claims for increase of pension, rerating of pension and original pensions in behalf of Mexican war survivors, Indian war survivors, Indian war widows and Mexican war widows. This was the identical class which might have title to bounty land warrants. The result was that a large number of the clients of the firm wrote the firm concerning bounty land titles. In a number of the cases, perhaps a dozen or more, I looked into the matter at the Pension Bureau and found that as a rule they had all received the full 160 acre bounty land warrants. In view of this fact, and because the inquiries thereafter became so numerous, the firm submitted to the Pension Bureau the question whether it should require these prospective clients to go to the expense of executing formal applications for the purpose of finding out whether or not these were bounty land warrants due them. The Commissioner consented to waive the filing of formal applications and directed that the information be given the attorney, either upon his presenting a letter from his client, or upon the written request of the attorney for information. This practice was followed in the Pension Bureau from about November, 1902, to some time during the latter part of 1905, when it was abolished, and thereafter formal applications had to be presented from the applicants. It was rarely found that any bounty land warrants were due.

The bounty land business was thus a more or less natural incident to the other business of the firm, and the firm's connection with it was occasioned by its large clientage in Mexican war and Indian war pension cases, and also by reason of the stimulus occasioned by the decision of the Department of February 5, 1902, in the Maginnis case.

Between the years 1902 and 1906, inclusive, I visited the Pension Bureau on an average of once a week in connection with the firm's pension business, including, of course, its military bounty land business. In the military bounty land matters my dealings and
354 conversations were usually had with Mr. Nathan B. Prentice, the assistant chief of the Old War and Navy Division, the division having in charge consideration of military bounty land warrants. He knew, because he often spoke of the matter to me, that attorneys were purchasing from their clients bounty land warrants, and while I cannot say that the other officials in the division knew about it, yet I feel morally certain that they did, because it was the general practice for attorneys to do it, and I never heard the practice questioned, or any objections raised against it by any of the officials of the Department until about December, 1906, when it came to my knowledge, through the firm's prosecution of the bounty land warrant case of Pygall, that the Pension Bureau did not look with favor on attorneys purchasing warrants from clients who had employed them to secure the warrants. As soon as this was discovered, I know that the firm promptly abandoned the practice and on December 12, 1906, wrote Mr. Pygall declining to purchase his warrant, and I know that since that date the firm has entirely abandoned all dealings in land warrants. I recognize the "Exhibit Pygall" as the firm's correspondence on this subject.

I also know that when the firm, on May 12, 1904, wrote the letter in the Thornton case, it had on hand the six military bounty land warrants mentioned in the affidavit of Emily F. Camp. These warrants were held by the firm until July 26, 1904, when they were sold to F. W. McReynolds, a scrip dealer of this city, at \$2.91 per acre. I know that between April and July, 1904, the firm made repeated efforts to dispose of said warrants and was unable to even get an offer
for them, the scrip market being so dull.

355 I can state positively that the firm did not examine the records of the Land Office, nor did it cause the same to be examined, for the purpose of finding out who had secured bounty land warrants that had not been located, and then seek to find the warrantees or their heirs. No such thing was done, and it could not have been done without my knowledge because, as before stated, all of this bounty land work came under my personal supervision and was for the most part attended to by me, and I was familiar with all the bounty land business secured and transacted by the firm.

It did sometimes happen that where individuals had written the firm claiming that they had never received bounty land warrants, inquiry in such cases was made at the Pension Office, as hereinbefore explained, and if it was there learned that land warrants had already been issued in full satisfaction of soldier's military service, the sol-

dier or whoever inquired in his behalf was so informed. In a few instances of this class, the soldier or his widow denied that any bounty land warrant had ever — issued and wanted to know what became of the warrant. I would then take such letters to the Land Office, and it was the custom of that Office to inform attorneys, or any person in fact, whether or not the warrant had been located. If the records showed that they had been located, the firm so informed the person making the inquiry and that ended the matter. I can state positively, however, that the firm never developed and filed a single application from this source, and whenever an inquiry was made at the Land Office at all it was made for the purpose of satisfying the person making the inquiry, and was in every instance done at his or her request. For this work, however, the firm received no compensation whatever. The firm never had but two applications for duplicate bounty land warrants and they were the cases of the heirs of John S. Pygall and Elvira E. Graves, child of George Teel, and the sources from which these two cases were obtained are stated precisely in parts III and IV, respectively, of "Exhibit—Bounty Land Cases", filed herewith.

As above stated, very few were found entitled to bounty land warrants because warrants had already been issued in full satisfaction of the soldier's military service. However, when an inquiry was received concerning these bounty land matters I looked into the matter at the Pension Office, the proper place to look into the same, and not at the Land Office. It was quite expensive to the firm to have me give attention to these bounty land inquiries, but nevertheless the firm directed that all such inquiries be properly answered. They could not be properly answered excepting by filing indiscriminately an application from every inquirer, or by submitting the matter, as above explained, to the Pension Bureau; and, as also above explained, the practice of the Pension Bureau between about November, 1902, and some time during the latter part of 1905, was to give this information without the filing of a formal application and thereby save the Pension Office much work, as well as save these prospective applicants the expense of having formal applications executed and filed.

(Signed)

FRANK D. FAWCETT.

Subscribed and sworn to before me this 24th day of June, A. D. 1907.

(Signed)
[SEAL.]

JOHN T. MEANY,
Notary Public, D. C.

357 *Affidavit of William J. Johnston.*

DISTRICT OF COLUMBIA, ss:

Before me, a Notary Public in and for the District aforesaid, personally appeared William J. Johnston, who, being by me first duly sworn, deposes and says:

I am a citizen of the United States and a resident of the District of Columbia. I have for thirty-two years been engaged at the City

of Washington in the practice before the General Land Office and Department of the Interior in land and mining business, and, incidentally, in Government Land Scrip, including military bounty land warrants, and am familiar with the history of that business and its various details, including the manner and methods of the procurement, issue, assignment and sale of the same.

I know of the pending charges against the firm of Milo B. Stevens & Company before the Bureau of Pensions and the Department of the Interior, and that among the said charges two mention me, namely, (1) that of the sale to one Abram Mathews, of Marquette, Michigan, of warrant No. 49,456, issued to one Elvira E. Graves; and (2), that I refused to testify with reference to this and certain other warrants before one John W. Hall, a Special Examiner of the Pension Bureau.

It is true that I sold the said warrant No. 49,456 to the
358 said Mathews, but it is not true that the said firm of Milo B.

Stevens & Company, or any member thereof, had any interest whatever in the said sale, or the proceeds thereof. At the time of making the said sale, the said warrant was my personal property, and I received the said proceeds, of which neither the said firm, nor any member thereof, received any part, and in which neither had any interest.

As respects my refusal to testify before the said Hall, the facts are as follows: The said Hall came to my office and desired to take my deposition, and, while he was there, I called up the office of Messrs. Stevens & Company by telephone, and Mr. Harney, of the said firm, answered my call. I told Mr. Harney that Mr. Hall was at my office, and Mr. Harney replied to me that I was at perfect liberty, so far as his firm was concerned, to give the desired information, and also stated that the firm itself would give the information to the said Hall if he would call at the firm's office. I gave the said Hall all the information that he desired, except as to the prices paid by me for warrants, and my refusal to give the said Hall this information was on my own responsibility and because I did not feel called upon to disclose my personal business and affairs, and my refusal was not because of any advice, request, suggestion, or hint of what kind soever, from the said firm of Stevens & Company, or any member thereof.

I have known as a fact for fully thirty years prior to the current year 1907, of the practice of dealing in military bounty land warrants in the District of Columbia, which practice was so general and followed under such circumstances that the same could not
359 fail to be known to the Bureau of Pensions and its appropriate officers. To my knowledge, there was never any rule of the Bureau of Pensions or of the Department of the Interior forbidding or discountenancing said practice, and I never knew of any criticism thereof, or objection thereto, emanating from the said Bureau or Department until the change of the rule and practice of the Bureau from sending the warrants to the attorneys to that of sending them direct to the claimantss. I know also that, prior to the said change of rule and practice, and prior to the institution of the inquiry out of which the charges pending against Messrs. Stevens & Company

and other persons have grown, the said practice was followed in full knowledge of its long existence and in the belief, engendered and confirmed by the silence of the Bureau and its officials on the subject, that such was entirely proper.

(Signed)

WILLIAM J. JOHNSTON.

Subscribed and sworn to before me this 24th day of June, A. D. 1907.

(Signed)

[SEAL.]

EDWARD B. KIMBALL,
Notary Public, D. C.

360

Affidavit of Homer Guerry.

DISTRICT OF COLUMBIA, ss:

Before me, a Notary Public in and for the District aforesaid, personally appeared Homer Guerry, who, being by me first duly sworn, deposes and says:

I am, and for more than eight years last past, have been, in active practice in the District of Columbia as a land attorney and, incidentally to my practice as such, I have, during the entire period mentioned, purchased land rights of all kinds and have probably bought and sold more than sixty thousand acres. I remember well that from June, 1903, to January, 1905, there was a great depression in the scrip business, as I happened, during that period, to be carrying more than eight thousand acres of land rights, of which about five thousand acres were in military bounty land warrants and surveyor-general scrip, practically of the same class. During the said period of more than nineteen months, there was practically no demand for land rights of any kind and not enough sales were made to pay interest on the money invested. I particularly remember that business was so dull during the months of April, May and June, 1904, that I made no sales whatever, and as I was heavily loaded with scrip and warrants at that time, I did not care to add to my stock.

During the said three months last mentioned, Messrs. Milo B. Stevens & Company, on several occasions, desired and offered
361 to sell me some military bounty land warrants, but I refused to make them any offer which would receive any consideration whatever. It would be expressive to say that land rights of all kinds at that time were a drug on the market and there was no price which could be easily obtained, and any one purchasing would be apparently taking the greatest kind of a speculative risk in so doing; and, not only was there no market for the scrip, but also the same was not available for borrowing purposes, owing to the uncertainty whether the Department would not reverse its decision in the Maginnis case and thereby make the warrants worth considerable less than one dollar per acre.

The decision of 1902 in the Maginnis case, which made warrants and scrip more valuable, because they were available in taking up offered lands directly, was, in fact, reversed by the Departmental decision of January 31, 1907, in the Simpson case, as was anticipated all along by all persons familiar with Departmental decisions, thus

realizing the anticipation of the great risk involved in buying warrants or scrip at least by those having a speculative profit in prospect.

I have always understood that it was the practice of attorneys obtaining warrants for their clients to purchase the same, when obtained, and that such practice had existed fully thirty years without the prohibition, or even criticism, of the Bureau of Pensions or Department of the Interior, and that the said practice, from long continuance and acquiescence therein by the Bureau and Department, had come to be understood as, if not having the sanction of the Department, at least not being open to any criticism or objection.

(Signed)

HOMER GUERRY.

362 Subscribed and sworn to before me this 24th day of June,
A. D. 1907.

(Signed)

HAZEL NORDEMAN,

[SEAL.]

Notary Public, D. C.

363

Affidavit of Henry N. Copp.

DISTRICT OF COLUMBIA, ss:

Before me, a Notary Public in and for the District aforesaid, personally appeared Henry N. Copp, who, being by me first duly sworn, deposes and says:

I have, for more than thirty years last past, to-wit, since the year 1876, been engaged in the District of Columbia in buying and selling military bounty land warrants, some of which I have bought from attorneys who represented to me that they had secured the warrants from the Bureau of Pensions as attorneys of record of the applicants. During all that time, I know it to have been the practice of such attorneys to buy such warrants from their clients, the applicants before the said Bureau, and to sell them to others at the most advantageous figures obtainable, and, although I have been actively engaged in the said business of buying and selling the said warrants, I never, until about eight months ago, heard the propriety of the practice questioned; and, indeed, the said practice has been generally followed in the belief, engendered and confirmed by the silence of the Bureau of Pensions and the Department of the Interior on the subject, that the same was legitimate and free from just criticism.

On January 1, 1904, I had on hand, unsold, seventeen hundred and sixty acres of military bounty land warrants, none of
364 which did I sell during the entire year of 1904. The reason that said warrants were not sold was because, throughout that year, there was little, or no, market for them, and I was compelled to hold them until the year 1905 before I was able to dispose of them.

(Signed)

HENRY N. COPP.

Subscribed and sworn to before me this 24th day of June, A. D. 1907.

(Signed)

GEO. E. TERRY,

[SEAL.]

Notary Public, D. C.

365

Receipt.

\$452.

MAY 22, 1907.

Received of Milo B. Stevens & Co., of Washington, D. C., a certified check, dated May 10, 1907, for \$452.00, drawn on the National Metropolitan Bank of Washington, D. C., in my favor, which together with the sum of \$120, heretofore paid me by them, represents \$582, that I have received from them for the bounty land warrant for 120 acres that was issued to me in March, 1906, and which I sold to them for a cash consideration in April, 1903, at a price therefor then mutually agreed upon; and which \$582.00, they represent is the full gross amount that they have received from their sale of the warrant, less their fee of \$10.00 for having secured the issuance of the warrant for me.

I received \$450-120.

(Signed)

MARY E. HARDEMAN.
(Sign here.)

Two witnesses:

(Signed) MADIE KIMBROUGH.
J. C. KIMBROUGH.

[Endorsed:] Receipt. B. L. W. No. —. Mary E., Widow of Wm. N. Hardeman, 1st Texas Cavalry, Mexican War.

366

Receipt.

\$486.00.

MAY 23, 1907.

Received of Milo B. Stevens & Co., of Washington, D. C., a certified check, dated May 10, 1907, for \$486.00 drawn on the National Metropolitan Bank of Washington, D. C., in my favor, which together with the sum of \$208.00 heretofore paid me by them, represents \$704.00, that I have received from them for the bounty land warrant for \$160 acres that was issued to me in May, 1903, and which I sold to them for a cash consideration in June, 1903, at a price therefor then mutually agreed upon; and which \$704.00 they represent is the full gross amount that they have received from their sale of the warrant, less their fee of \$10.00 for having secured the issuance of the warrant for me.

(Signed)

SARAH F. SMITH.
(Sign here.)

Two witnesses:

(Signed) J. M. REASIR.
C. P. WALKER.

[Endorsed:] Receipt. B. L. W. No. —. Sarah F., widow of Burr C. Smith, Co. H, 3d La. Vols., Mexican War.

367

Receipt.

\$469.00.

MAY 16TH, 1907.

Received of Milo B. Stevens & Co. of Washington, D. C., a certified check, dated May 10, 1907, for \$469.00, drawn on the American Security and Trust Co. Bank of Washington, D. C., in my favor, which together with the sum of \$225.00 heretofore paid me by them, represents \$704.00, that I have received from them for the bounty land warrant for 160 acres that was issued to me in August 1903, and which I sold to them for a cash consideration in September, 1903, at a price therefor then mutually agreed upon; and which \$704.00 they represent is the full gross amount that they have received from their sale of the warrant, less their fee of \$10.00 for having secured the issuance of the warrant for me.

(Signed)

her
BRIDGET x BOTHWELL.
mark.

(Sign here.)

Two witnesses:

(Signed) GEO. HUNHESS.
JAS. E. BOTHWELL.

[Endorsed:] Receipt. B. L. W. No. —. Bridget, widow of Edward H. Bothwell, 1st U. S. Infy., Indian War.

368

Receipt.

\$147.75.

MAY 18, 1907.

Received of Milo B. Stevens & Co., of Washington, D. C. a certified check, dated May 11, 1907, for One Hundred and Forty-Seven Dollars and Seventy-five cents, drawn on the Nat. Metropolitan Bk., Washington, D. C., in my favor, which together with the sum of \$452.25, heretofore paid me by them, represents \$600 that I have received from them for the bounty land warrant for 160 acres that was issued to me in October, 1903, and which I sold to them for a cash consideration in January, 1904, at a price then mutually agreed upon; and which \$600 they represent is the full gross amount that they have received from their sale of the warrant.

(Signed)

her
MRS. CATHERINE x HOGAN.
mark.

(Sign here.)

Two witnesses:

(Signed) GEO. LEONARD.
WILL LEONARD.

[Endorsed:] Receipt. B. L. W. No. 115,607. Catherine, widow of Andrew Hogan, Co. D, 1st Mt. Rifles, Indian War.

369

Receipt.

\$255.60.

NEWBURGH, N. Y., *June 4, 1907.*

Received of Milo B. Stevens & Co. of Washington, D. C., a certified check dated May 10, 1907, for \$255.60 drawn on the American Security and Trust Co. Bank of Washington, D. C., in favor of George Bull, which together with the sum of \$200 that they claim, and which I believe to be true, to have paid George Bull, represents \$465.60, less their fee of \$10 for having secured the issuance of his bounty-land warrant, that they have paid George Bull and his administrator for the bounty-land warrant for 160 acres that was issued in favor of George Bull in January, 1904, and which he sold to them for a cash consideration in February, 1904, at a price then mutually agreed upon, and which \$465.60, they, Stevens & Co., represent is the full gross amount that they have received from their sale of the warrant.

(Signed)

GEORGE L. BULL,
Administrator for Estate of Geo. Bull.
GEORGE.

Witness:

(Signed) HENRY KOHL.

370 The People of the State of New York to all to whom these presents shall come or may concern send greeting:

Know Ye, That we, having inspected the records of our Surrogate's Court, in and for the County of Orange, do find that on the 28th day of May, in the year one thousand nine hundred and seven by said Court, letters of administration on the goods, chattels and credits which were of George W. Bull late of the City of Newburgh, in the County of Orange, deceased, were granted and committed unto George L. Bull, and that it does not appear by said Records that said Letters have been revoked.

In testimony whereof, We have caused the Seal of our said Surrogate's Court to be hereunto affixed. Witness, Hon. Obahuah P. Howell, Surrogate of our said County, at Goshen, the 28th day of May in the year of our Lord, one thousand nine hundred and seven.

[SEAL.] (Signed)

O. P. HOWELL,
Surrogate.

[Endorsed:] Surrogate's Court, Orange County. In the Matter of the Administration on the Estate of George W. Bull, deceased. Certificate of appointment.

371 STATE OF NEW YORK,
Orange County Surrogate's Office, ss:

I, Theodore D. Schoonmaker, Clerk of the Surrogate's Court of said County, do hereby certify that I have compared the annexed copy of the Order made and entered on the 4th day of June, 1907,

in the Matter of the Letters of Administration of the Goods, Chattels and Credits of George W. Bull, late of the City of Newburgh, in the County of Orange, deceased with the original record thereof, now remaining in this Office, and have found the same to be a correct transcript therefrom, and of the whole of said original record. And I further certify that said exemplification would be admissible as evidence in all of the Courts of the State of New York.

In testimony whereof, I have hereunto set my hand and affixed the seal of the Surrogate's Court, this 5th day of June in the year of our Lord one thousand nine hundred and seven.

(Signed)
[SEAL.]

T. D. SCHOONMAKER,
Clerk of the Surrogate's Court.

372

Surrogates' Court, Orange County.

In the Matter of Letters of Administration of the Goods, Chattels and Credits of GEORGE W. BULL, Deceased.

Upon reading and filing the affidavit of George L. Bull, administrator of the estate of George W. Bull, deceased, in and by which it appears to my satisfaction that the said George W. Bull, deceased, was enlisted in the Mexican War under the name of George Bull, and that the said George W. Bull received a bounty claim from the United States Government under the name of George Bull, which claim for bounty has recently been sold and upon which the next of kin of the said George W. Bull are entitled to receive their distributive share and application having heretofore been made to this Court for letters of administration of the estate of George W. Bull, deceased, for the purpose of collecting said bounty claim, and it appearing to my satisfaction from examination of the pension certificate of the said George Bull that the said George W. Bull, upon whom letters of administration have heretofore been issued, and the said George Bull, mentioned in the said pension certificate and bounty claim, are one and the same person.

Now, on motion of Henry Kohl, attorney for George L. Bull, administrator:

It is ordered, That the letters of administration heretofore issued herein upon the estate of George W. Bull, deceased, be and the same hereby are amended by striking out the initial or middle letter "W" in the name of the said George W. Bull, so that the said letters of administration heretofore issued herein, as corrected, will show that the same were issued upon the estate of George Bull, deceased.

(Signed)

O. P. HOWELL,
Surrogate, Orange County.

374

[Endorsed:] Receipt. Bounty Law Warrant No. 115,617. George Bull, U. S. Navy, Mexican War. Surrogate's Court, Orange County. In the Matter of Letters of Administration of the Goods, Chattels and Credits of George W. Bull deceased. *Copy.* Order. Dated June 1st, 1907.

375

Receipt.

\$285.60.

MAY 18, 1907.

Received of Milo B. Stevens & Co., of Washington, D. C., a certified check, dated May 10, 1907, for \$285.60, drawn on the National Metropolitan Bank of Washington, D. C., in my favor, which together with the sum of \$170.00 heretofore paid me by them, represents \$465.60, that I have received from them for the bounty land warrant for 160 acres that was issued to me in April, 1904, and which I sold to them for a cash consideration in April, 1904, at a price therefor then mutually agreed upon; and which \$465.60, they represent is the full gross amount that they have received from their sale of the warrant, less their fee of \$10.00, for having secured the issuance of the warrant for me.

(Signed)

JAMES HOLLENBECK.

(Sign here.)

Two witnesses:

(Signed)

C. E. JENKINS.

ALICE M. JENKINS.

[Endorsed:] Receipt. B. L. W. No. —. Jane, widow of Thomas Hollenbeck, U. S. Navy, Mexican War.

376

Receipt.

\$189.20.

MAY 20, 1907.

Received of Milo B. Stevens & Co., of Washington, D. C. a certified check, dated May 10, 1907, for \$189.20, drawn on the American Security & Trust Co. Bank of Washington, D. C., in my favor, which together with the sum of \$150.00 heretofore paid me by them, represents \$349.20, that I have received from them for the bounty land warrant for 120 acres that was issued to me in March, 1904, and which I sold to them for a cash consideration in April, 1904, at a price therefor then mutual- agreed upon; and which \$349.20, they represent is the full gross amount that they have received from their sale of the warrant, less their fee of \$10.00 for having secured the issuance of the warrant for me.

(Signed)

her
ELIZABETH x CANNON.
mark.

(Sign here.)

Two witnesses:

(Signed)

D. A. SPIREY.

W. PERCY HARDINKE.

[Endorsed:] Receipt. B. L. W. No. —. Elizabeth, widow of Benj. Cannon, Late of Capt. Ruth Elmore Co., La. Vols., Mexican War.

377

Receipt.

\$255.60.

MAY 16, 1907.

Received of Milo B. Stevens & Co., of Washington, D. C., a certified check, dated May 10, 1907, for \$255.60, drawn on the American Security & Trust Co. Bank of Washington, D. C., in my favor, which together with the sum of \$200.00, heretofore paid me by them, represents \$465.20, that I have received from them for the bounty land warrant for 160 acres that was issued to me in March, 1904, and which I sold to them for a cash consideration in April, 1904, at a price therefor then mutually agreed upon; and which \$465.60 they represent is the full gross amount that they have received from their sale of the warrant, less their fee of \$10.00 for having secured the issuance of the warrant for me.

(Signed)

ROBERT CLARK.
(Sign here.)

Two witnesses:

(Signed) G. A. LEVI,
J. K. HEXTER.

[Endorsed:] Receipt. B. L. W. No. 115,630. Robert Clark, Co. D, 1st Miss. Rifles, Mexican War.

378

Receipt.

\$139.20.

MAY 24, 1907.

Received of Milo B. Stevens & Co., of Washington, D. C. a certified check, dated May 10, 1907, for \$139.20, drawn on the American Security and Trust Co. Bank of Washington, D. C. in my favor, which together with the sum of \$200.00, heretofore paid me by them, represents \$349.20, that I have received from them for the bounty land warrant for 120 acres that was issued to me in April, 1904, and which I sold to them for a cash consideration in May, 1904, at a price therefor then mutually agreed upon; and which \$349.20 they represent is the full gross amount that they have received from their sale of the warrant, less their fee of \$10.00 for having secured the issuance of the warrant for me.

(Signed)

HENRY M. FITZGERALD.
(Sign here.)

Two witnesses:

(Signed) J. H. BEDGOOD, JR.
T. H. DILLION.

[Endorsed:] Receipt. B. L. W. No. —. Henry W. Fitzgerald, Co. G, 4th La., Mexican war.

379 G. B. Graves.

J. J. Pate.

Graves & Pate, Dealers in and Manufacturers of Band Sawed Hardwood Lumber, Perfectly Manufactured, Oak, Ash, Poplar, Chestnut, Basswood, Hickory, etc.

RED BOILING SPRINGS, TENN., *May* 16, 1907.

Messrs. Milo B. Stevens & Co., Washington, D. C.

GENTLEMEN: The ch. and statement sent to E. E. Green received and noted and will say an officer told us that this claim was placed in the Northwest in the pine timber land. I will kindly ask you to write by return mail to whom you sold this claim to and in what state it is was placed. Also township, Range & Section Please give us all the facts so it wont be necessary to trouble the pension office to find out. We will await your reply.

Very repf.,
(Signed)

GEO. B. GRAVES.

[Endorsed:] Receipt (Acknowledged). Duplicate. B. L. W. No. 49,456. Eloia E. Graves, child of George Teel, War 1812.

380

Receipt.

\$210.00.

MAY 17, 1907.

Received of Milo B. Stevens & Co., of Washington, D. C. a certified check, dated May 11, 1907, for Two hundred and Ten Dollars, drawn on the National Metropolitan Bank of Washington, D. C., in my favor, which together with the sum of \$350 heretofore paid me by them represents \$560. that I have received from them for the bounty land warrant for 160 acres that was issued to me in June, 1904, and which I sold to them for a cash consideration in October, 1904, at a price therefor then mutually agreed upon; and which \$560 they represent is the full gross amount that they have received from their sale of the warrant.

(Signed) her
CATHERINE x E. MAXWELL.
mark.

Two witnesses:

(Signed) A. W. IRWIN.
THOS. SWIFT.

[Endorsed:] Receipt. B. L. W. No. 115,647. Catherine E., widow of George Maxwell, Co. K, 1st U. S. Infy., Indian War.

381

Receipt.

\$310.00.

MAY 17, 1907.

Received of Milo B. Stevens & Co., of Washington, D. C., a certified check, dated May 10, 1907, for \$310.00, drawn on the National

Metropolitan Bank of Washington, D. C., in my favor which together with the sum of \$200.00 heretofore paid me by them represents \$520.00, that I have received from them for the bounty land warrant for 160 acres that was issued to me in July, 1904, and which I sold to them for a cash consideration in August, 1904, at a price therefor then mutually agreed upon; and which \$520.00 they represent is the full gross amount that they have received from their sale of the warrant less their fee of \$10.00 for having secured the issuance of the warrant for me.

(Signed)

D. O. McQUAGE.
(Sign here.)

Two witnesses:

(Signed) MILTON M. LAUREN.
JENNIE W. LAUREN.

[Endorsed:] Receipt. B. L. W. No. 115,651. Dan'l P., child of James McQuage, Palmetto Regt., So. Cav. Vols., Mexican War.

382

Receipt.

\$272.00.

MAY 16, 1907.

Received of Milo B. Stevens & Co., of Washington, D. C. a certified check, dated May 10, 1907, for \$272.00 drawn on the National Metropolitan Bank of Washington, D. C., in my favor, which together with the sum of \$150.00 heretofore paid me by them, represents \$432.00, that I have received from them for the bounty land warrant for 120 acres that was issued to me in September, 1904, and which I sold to them for a cash consideration in April, 1905, at a price therefor then mutually agreed upon; and which \$432.00 they represent is the full gross amount that they have received from their sale of the warrant, less their fee of \$10.00 for having secured the issuance of the warrant for me.

(Signed)

PAULINE CLARK.
(Sign here.)

Two witnesses:

(Signed) L. B. McDONALD.
G. A. LEVI.

[Endorsed:] Receipt. B. L. W. No. —. Pauline Clark, child of John Shirkey, of Capt. Rowland's Co., Va. Militia, War 1812.

383

Receipt.

\$360.00.

MAY 18, 1907.

Received of Milo B. Stevens & Co., of Washington, D. C. a certified check, dated May 10, 1907, for \$360.00, drawn on the American Security & Trust Co. Bank of Washington, D. C., in my favor, which together with the sum of \$190.00 heretofore paid me by them, represents \$560.00 that I have received from them for the bounty land

warrant for 160 acres that was issued to me in September, 1904, and which I sold to them for a cash consideration in November, 1904, at a price therefor then mutually agreed upon; and which \$560.00 they represent is the full gross amount that they have received from their sale of the warrant, less their fee of \$10.00 for having secured the issuance of the warrant for me.

(Signed)

her
SARAH A. x CLARY.
mark.
(Sign here.)

Two witnesses:

(Signed) M. L. VANAKEN.
M. VANAKEN.

[Endorsed:] Receipt. B. L. W. No. —. Sarah A., widow of John Clary, Texas Rangers, Indian War.

384

Receipt.

\$250.00.

MAY —, 1907.

Received of Milo B. Stevens & Co., of Washington, D. C., a certified check, dated May 10, 1907, for \$250.00 drawn on the American Security and Trust Bank of Washington, D. C., in my favor, which together with the sum of \$100.00 heretofore paid me by them, represents \$360.00 that I have received from them for the bounty land warrant for 80 acres that was issued to me in October, 1904, and which I sold to them for a cash consideration in December, 1904, at a price therefor then mutually agreed upon; and which \$360.00 they represent is the full gross amount that they have received from their sale of the warrant, less their fee of \$10.00 for having secured the issuance of the warrant for me.

(Signed)

MRS. SALLIE GIPSON.
(Sign here.)

Two witnesses:

(Signed) MRS. LILLIE O. HOLLAND.
W. W. HOLLAND.

[Endorsed:] Receipt. B. L. W. No. —. Sallie, widow of Frederick Gipson, of Capt. Cherry's Tenn. Co., Indian War.

385

Receipt.

\$470.00.

MAY 18, 1907.

Received of Milo B. Stevens & Co., of Washington, D. C., a certified check, dated May 10, 1907, for \$470.00, drawn on the National Metropolitan Bank of Washington, D. C., in my favor, which together with the sum of \$200.00, heretofore paid me by them, represents \$680.00 that I have received from them for the bounty land warrant for 160 acres that was issued to me in July 1905, and which I sold to them for a cash consideration in August, 1905, at a price

therefor then mutually agreed upon; and which \$6-0.00 they represent is the full gross amount that they have received from their sale of the warrant, less their fee of \$10.00 for having secured the issuance of the warrant for me.

(Signed)

her
MARGARET x MONAGHAN.
mark.
CHAS. WETHERELL.
(Sign here.)

Two witnesses:

(Signed) L. F. SMITH.
CHAS. WETHERELL.

[Endorsed:] Receipt. B. L. W. No. —. Margaret Monaghan, widow — Thomas Monaghan, Co. I, 1st ? Inf't'y, Indian War.

386

MAY 22.

Received of Milo B. Stevens & Co. of Washington, D. C., a certified check, dated May 10, 1907, for \$455.00 drawn on the American Security and Trust Co. Bank of Washington, D. C., in my favor which together with the sum of \$200.00 heretofore paid me by them, represents \$680.00 that I have received from them for the bounty land warrant for 160 acres that was issued to me in August, 1905, and which I sold to them for a cash consideration in September, 1905, at a price therefor then mutually agreed upon; and which \$680.00 they represent is the full gross amount that they have received from their sale of the warrant, less their fee of \$25.00 for having secured the issuance of the warrant for me.

(Signed)

MARY E. EATAN.
(Sign here.)

Two witnesses:

(Signed) HENRY MOLLY DAY, JR.
MARY A. CAULK.

[Endorsed:] Receipt. B. L. W. No. 115,693. Mary E., widow of Thomas Eaton, U. S. Navy, Mexican War.

387

Receipt.

\$580.

MAY 16, 1907.

Received of Milo B. Stevens & Co., of Washington, D. C. a certified check, dated May 10, 1907, for \$580. drawn on the American Security and Trust Company Bank of Washington, D. C., in my favor, which together with the sum of \$75. heretofore paid me by them, represents \$680. that I have received from them for the bounty land warrant for 160 acres that was issued to me in August, 1905, and which I sold to them for a cash consideration in September, 1905, at a price therefor then mutually agreed upon; and which \$680. they represent is the full gross amount that they have received

from their sale of the warrant, less their fee of \$25. for securing the issuance of the warrant to me.

(Signed)

LETITIA I. HICKMAN.
(Sign here.)

Two witnesses:

(Signed) R. G. HICKMAN.
DELLA HICKMAN.

[Endorsed:] Receipt. B. L. W. No. —. Letitia J. Hickman, child of Nathan Frakes, 1st Ky. Militia, War 1812.

388

Receipt.

\$455.00.

MAY 24, 1907.

Received of Milo B. Stevens & Co., of Washington, D. C. a certified check, dated May 10, 1907, for \$455.00, drawn on the National Metropolitan Bank of Washington, D. C., in my favor which together with the sum of \$200.00, heretofore paid me by them, represents \$680.00 that I have received from them for the bounty land warrant for 160 acres that was issued to me in August, 1905, and which I sold to them for a cash consideration in September, 1905, at a price therefor then mutual-agreed upon; and which \$680.00 they represent is the full gross amount that they have received from their sale of the warrant, less their fee of \$25.00 for having secured the issuance of the warrant for me.

(Signed)

SALLIE B. REDDICK.
(Sign here.)

Two witnesses:

(Signed) EARL V. LEWIS.
ROBT. T. NEWHARD.

[Endorsed:] Receipt. B. L. W. No. —. Sallie B., widow of Jonathan Reddick, 3d Ill. Vol., Indian War.

389

Receipt.

\$200.00.

MAY 16, 1907.

Received of Milo B. Stevens & Co., of Washington, D. C., a certified check, dated May 10, 1907, for \$200.00, drawn on the National Metropolitan Bank of Washington, D. C., in my favor, which together with the sum of \$300.00, heretofore paid me by them, represents \$510.00, that I have received from them for the bounty land warrant for 120 acres that was issued to me in October, 1905, and which I sold to them for a cash consideration in October, 1905, at a price therefor then mutually agreed upon, and which \$510.00 they represent is the full gross amount that they have received from their sale of the warrant, less their fee of \$10.00, for having secured the issuance of the warrant to me.

(Signed)

ELIZA STEVENS.
(Sign here.)

Two witnesses:

(Signed) B. S. FISK.
M. T. ECKLES.

[Endorsed:] Receipt. B. L. W. No. —. Eliza, widow of Edward A. Stevens, Co. H, 3d Texas, Mexican War.

390

Receipt.

\$180.00.

MAY 15, 1907.

Received of Milo B. Stevens & Co., of Washington, D. C. a certificate check, dated May 10, 1907, for \$180.00, drawn on the National Metropolitan Bank of Washington, D. C., in my favor which together with the sum of \$50.00, heretofore paid me by them, represents \$240.00, that I have received from them for the bounty land warrant for 40 acres that was issued to me in December, 1905, and which I sold to them for a cash consideration in February, 1906, at a price therefor then mutual- agreed upon; and which \$240.00 they represent is the full gross amount that they have received from their sale of the warrant, less their fee of \$10.00, for having secured the issuance of the warrant for me.

(Signed)

W. C. McKEAN.

(Sign here.)

Two witnesses:

(Signed) F. B. TYMER, *Seguin, Tex.*
C. W. FOSTER, " "

GENTLEMEN: Enclosed please find Draft on B'nk of New York for 15.00 which will cover all Balance due you, thanking you for all your trouble, I remain,

Yours truly,

(Signed)

WM. C. McKEAN,
Per F. B. T.

I have keep "a working" on that pension business.

[Endorsed:] Receipt. B. L. W. No. 542. Wm. C. McKean, Texas Mt. Vols., Mexican War.

391

Receipt.

\$190.00.

MAY 14, 1907.

Received of Milo B. Stevens & Co., of Washington, D. C., a certified check, dated May 11, 1907, for One Hundred and Ninety Dollars, drawn on the bank of American Security and Trust Co., Washington, D. C., in my favor, which together with the sum of \$250 heretofore paid me by them, represents \$440 that I have received from them for the bounty land warrant of 80 acres that was issued to me in April, 1906, and which I sold to them for a cash consideration in June, 1906, at a price therefor then mutually agreed upon, and which \$440 they represent is the full gross amount that they have received from their sale of the warrant.

(Signed)

JAMES BESSER.

(Sign here.)

Two witnesses:

(Signed) LEWIS BALL, JR.
KNO. B. LEIGH.

[Endorsed:] Receipt. B. L. W. No. 49486. James Besser, Texas Rangers, Indian War.

392

RESPONDENT'S EXHIBIT No. 19.

Filed June 9, 1908.

Law Division.

S. A. C.

G. C. S.

J. E. M.

DEPARTMENT OF THE INTERIOR,

BUREAU OF PENSIONS,

WASHINGTON, D. C., *June 12, 1907.*

The Honorable the Secretary of the Interior.

MR. SECRETARY: I have the honor to transmit herewith the original papers in the military bounty land warrant and pension claims hereinafter designated, and the papers in the attorneyship files of Milo B. Stevens & Co., of Washington, District of Columbia; Cleveland, Ohio; Detroit, Michigan; and Chicago, Illinois, with the recommendation that an order be issued disbaring Eugene E. Stevens and Thomas R. Harney, of Washington, District of Columbia, doing business under the firm name of Milo B. Stevens & Co., from further practice before this Bureau.

In order that the charge preferred and the bearing of the evidence presented may be clearly understood, it is necessary to state certain facts connected with the recent history of military bounty land warrants.

Such warrants could only be located upon certain offered lands in the State of Missouri, and they were worth from \$1.00 to \$1.25 per acre up to February 5, 1902, when, in Departmental decision in the case of Charles P. Maginnis (31 L. D., 222) it was held
393 that such warrants could be located upon any lands of the United States subject to private entry. The effect of this decision was to immediately enhance the market value of such warrants, and in 1904-05, dealers purchased 160-acre warrants for \$4.00 per acre; 120-acre warrants at \$4.50 per acre; 80-acre warrants at \$4.74 per acre; and 40-acre warrants at \$5.00 per acre, and in some instances higher prices were paid (see report of Special Examiner Stewart).

This increase in the value of warrants stimulated the filing of applications in this Bureau and excited the greed of certain attorneys engaged in the prosecution of such claims, leading them to resort to improper, unprofessional and illegal conduct to the end that they might obtain greater profits from their business than was provided by law.

On January 31, 1907, *in re ex parte* Lawrence W. Simpson (copy herewith), the Department reversed the Maginnis decision and restored the former practice.

It is with reference to the joint actions of Eugene E. Stevens and Thomas R. Harney during the period from the date of the Maginnis decision to the date of the Simpson decision that these charges relate, as the effect of the Simpson decision was to destroy the inflated value of the warrants, and as on October 10, 1906, in view of the facts es-

394 tablished, I issued Order No. 85, abrogating the practice to
 send warrants to any persons designated by the warrantees
 and requiring that each warrant should be delivered to the
 warrantee only by registered mail thus applying the ax to the root of
 the evil.

So far as this Bureau has been able to ascertain during the period
 in question, Messrs. Stevens and Harney, jointly, in their capacities
 as attorneys of record before the Department of the Interior, secured
 the issuance of 36 warrants and Mr. Harney, apparently in his in-
 dividual behalf, purchased one warrant which was issued during the
 year 1857. To the end that the entire record may be before you
 I transmit herewith the papers in all of these claims, and also the
 original papers in the rejected application of Meta G. Thornton.
 Herewith please find the original papers in the following pension
 and bounty land cases:

*1. Mary J., widow of Hugh Ochiltree, Captain Wheeler's Co.,
 2d Texas Volunteers, Mexican war, pension certificate No. 12615;
 warrant No. 97066-120-55, issued May 26, 1903.

2. Sarah F., widow of Burr C. Smith, Co. H, 3d Louisiana Vol-
 unteers, Mexican war, pension certificate No. 9844; warrant No.
 115597-160-55, issued May 26, 1903.

3. Bridget, widow of Edward H. Bothwell, Captain King's Co.,
 1st United States Infantry, Indian war, pension certificate No. 5978;
 warrant No. 115601-160-55, issued August 11, 1903.

4. Thomas Crowley, Co. C, 1st United States Infantry, Indian
 war, pension certificate No. 3939; warrant No. 115602-160-55, issued
 August 11, 1903.

395 5. James Salter, Co. C, 2d United States Dragoons, Indian
 war, pension certificate No. 4506; warrant No. 115603-160-55,
 issued October 9, 1903.

*6. Catherine, widow of Andrew Hogan, Co. D, 1st United States
 Mounted Rifles, Indian war, pension certificate No. 5953; warrant
 No. 115607-150-55, issued October 23, 1903.

7. Winifred, widow of Henry Semlinger, Co. C, 2d United States
 Dragoons, Indian war, pension certificate No. 6127; warrant No.
 115608-160-55, issued October 23, 1903.

*8. Charles M. Duret, alias Charles Nutter, U. S. S. "Somers,"
 "Raritan," "Aetna," and "Saratoga," Mexican war, pension certifi-
 cate No. 15696; warrant No. 115612-160-55, issued December 23,
 1903.

9. Mary, widow of Dennis Keating, Co. I, 1st United States In-
 fantry, Indian war, pension certificate No. 6314; warrant No.
 115613-160-55, issued December 23, 1903.

*10. George Bull, deceased, U. S. S. "Mississippi," Mexican war,
 pension certificate No. 12647; warrant No. 115617-160-55, issued
 January 27, 1904.

11. Jane, widow of Ross Kennedy, Co. I, 1st United States In-
 fantry, Indian war, pension certificate No. 6239; warrant No. 115618-
 160-55, issued January 27, 1904.

*12. Jane, widow of Thomas Hollenbeck, U. S. S. "Congress,"

Mexican war, pension certificate No. 9696; warrant No. 115624-160-55, issued March 2, 1904.

13. Kate, widow of Charles L. Wurzbach, Co. C, 2d United States Dragoons, Indian war, pension certificate No. 6419; warrant No. 115627-160-55, issued March 2, 1904.

14. Elizabeth M., widow of Charles Champie, Co. C, 1st United States Infantry, Indian war, pension certificate No. 6480; warrant No. 115629-160-55, issued March 23, 1904.

*15. Elizabeth, widow of Benjamin Cannon, Captain Elmore's Co., Alabama Volunteers, Mexican war, pension certificate No. 13484; warrant No. 97073-120-55, issued March 23, 1904.

396 *16. Robert Clark, Co. D, 1st Mississippi Volunteers, Mexican war, pension certificate No. 20117; warrant No. 115630-160-55, issued March 23, 1904.

*17. Henry W. Fitzgerald, Co. G, 4th Louisiana Militia Infantry, Mexican war, pension certificate No. 1007; warrant No. 97075-120-55, issued April 26, 1904.

18. Jane, widow of Patrick Leonard, Co. I, 1st United States Infantry, Indian war, pension certificate No. 6043; warrant No. 115643-160-55, issued April 27, 1904.

*19. Elvira G. Graves, child of George Teel, Captain Nathan Cowan's Co., Tennessee Militia, war of 1812, duplicate warrant, No. 49456-80-55, issued April 27, 1904.

20. Bartholomew Shannon, teamster, Texas Volunteers, warrant No. 115646-160-55, issued June 17, 1904.

21. Catherine E., widow of George Maxwell, Co. K, 1st United States Infantry, Indian war, pension certificate No. 6073; warrant No. 115647-160-55, issued June 17, 1904.

*22. Daniel P., child of James McQuage, Palmetto Regiment, South Carolina Volunteers, Mexican war, warrant No. 115651-160-55, issued July 21, 1904.

23. Mattie, widow of Thomas J. Hughes, Co. B, 3d United States Infantry, Indian war, pension certificate No. 6678; warrant No. 115653-160-55, issued July 27, 1904.

*24. Pauline Clark and William L. Shirkey, children of John Shirkey, Captain Rowland's Co., Virginia Militia, war of 1812, widow's pension certificate No. 24524; warrant No. 97078-120-55, issued September 16, 1904.

*25. John Clary, deceased, Captain Conner's Co., Texas Mounted Volunteers, Indian war, pension certificate No. 5785; widow's original No. 10180; warrant No. 115661-160-55, issued September 29, 1904.

*26. Sallie, widow of Frederick F. Gipson, Captain Cherry's Co., Tennessee Mounted Volunteers, Indian war, pension certificate No. 31; warrant No. 49482-80-55, issued October 17, 1904.

397 *27. Josiah Chambers, Co. E, 2d Louisiana Volunteers, Mexican war, pension certificate No. 16615; warrant No. 115680-160-55, issued January 17, 1905.

*28. Margaret, widow of Thomas Monaghan, Co. I, 1st United States Infantry, Indian war, pension certificate No. 7025; warrant No. 115689-160-55, issued July 7, 1905.

*29. Mary E. widow of Thomas Eaton, U. S. S. "Warren," Mex-

ican war, pension certificate No. 8793; warrant No. 115693-160-55, issued August 28, 1905.

*30. Letitia J. Hickman, child of Nathan Frakes, Captain Thomas's Co., 1st Kentucky Militia, war of 1812, warrant No. 115698-160-55, issued August 28, 1905.

*31. Sallie B., widow of Jonathan Reddick, Captain Hall's Co., 3d Illinois Mounted Volunteers, Indian war, pension certificate No. 5728; warrant No. 115700-160-55, issued August 28, 1905.

*32. Eliza, widow of Edward A. Stevens, Co. H, 3d and Highsmith's Cos., 1st Texas Mounted Volunteers, Mexican war, pension certificate No. 9485; warrant No. 97082-120-55, issued October 9, 1905.

*33. William C. McKean, Captain McCulloch's Co., Texas Mounted Volunteers, Mexican war, pension certificate No. 16549; warrant No. 542-40-55, issued December 1, 1905.

*34. James Besser, Captain McCown's Co., Texas Mounted Rangers, pension certificate No. 5765; warrant No. 49486-80-55, issued April 30, 1906.

*35. Eva Elizabeth, widow of Haywood Harrell, Captain Redding's Co., Florida Volunteers, Indian war, pension certificate No. 6825; warrant No. 49488-80-55, issued August 9, 1906.

36. John S. Pygall, Jane E. Billington, and Franklin McClane, children of Thomas Pygall, Captain Hick's Co., 1st Michigan Volunteers, Mexican war, duplicate warrant, No. 42382-160-47, issued November 23, 1906.

398 37. Meta G., widow of Henry F. Thornton, unassigned recruit, 1st Virginia Volunteers, Mexican war, pension certificate No. 12066; rejected application for warrant, original No. 100874.

38. Harriet S., widow of Thomas W. Bacot, Marine Corps, war of 1812, warrant No. 52734-160-55, issued January 7, 1857, and purchased by Thomas R. Harney, June 4, 1904.

Milo B. Stevens & Co. were the attorneys of record in the cases from one to thirty-seven, inclusive, but were not the attorneys of record in case No. 38, Mr. Harney having simply purchased the warrant in 1904. The cases are arranged in chronological order with reference to the date of the issuance of the warrants, and in the cases marked (*) the warrants were delivered to Milo B. Stevens & Co., on orders signed by the warrantees.

Case #1, Mary J. Ochiltree, warrant No. 97066-120-55, issued May 26, 1903.—Milo B. Stevens & Co. were the attorneys of record in the claim for widow's pension, allowed under certificate issued February 7, 1902, on testimony showing that their client was born on July 12, 1838, and that her property did not exceed \$1500 in value (see B. J. 3, 4 and 5 in the pension claim). The warrant was delivered to Milo B. Stevens & Co., and receipted for by them on July 23, 1903 (see receipt attached to face brief). Said warrant was assigned in blank by the warrantee on December 13, 1904. This case has not been investigated by the Bureau, but is referred to in the response of Milo B. Stevens & Co. to the citation. There is no evidence before the Bureau as to how much was paid by Stevens & Co. for the warrant or that restitution was made to the war-
399 rantee.

Case #2, Sarah F. Smith, warrant No. 115597-160-55, issued May 26, 1903.—Milo B. Stevens & Co. were the attorneys of record in the warrantee's application for pension. The widow was 67 years of age on February 13, 1893. The warrant was delivered to the warrantee, and there is no evidence as to the sale of or price obtained for the warrant.

Case #3, Bridget Bothwell, warrant No. 115601-160-55, issued August 11, 1903.—Milo B. Stevens & Co. were the attorneys of record in the warrantee's claim for pension and in connection therewith filed testimony showing that their client was married to the soldier in 1855 (see papers in pension claim). The warrant was delivered to and receipted for by Milo B. Stevens & Co., on September 1, 1903 (see receipt attached to face brief). On September 5, 1903, the warrantee assigned her warrant in blank (see original assignment herewith). This case has not been investigated, but the warrantee states that Milo B. Stevens & Co., on September 12, 1903, paid her \$225 for her warrant, less \$25 attorneys fee, and that since May 10, 1907, she has received a check from said firm for the sum of \$469, representing the difference in the amount originally paid her for the warrant and the amount for which it was sold by
400 Milo B. Stevens & Co., thus indicating that Stevens & Co., paid their client \$200 net for the warrant and sold the same for \$694 (see original statement of warrantee).

Case #4, Thomas Crowley, warrant No. 115602-160-55, issued August 11, 1903.—In the declaration for bounty land warrant, filed by Milo B. Stevens & Co., on June 6, 1903, the age of the applicant is given as 70 years. This case has not been investigated by the Bureau. The warrant was delivered to the warrantee (see original papers), and in his letter filed June 6, 1907, he states that in September or October, 1903, he sold the warrant to Mr. Fout, of St. Louis, Mo., for \$600.

Case #5, James Salter, warrant No. 115603-160-55, issued October 9, 1903.—Milo B. Stevens & Co., were the attorneys of record in the warrantee's application for pension, and on September 16, 1902, filed in this Bureau the declaration of their client in which he alleged that he was 73 years of age (see original declaration). The warrant was delivered to the warrantee, and the case has not been investigated by this Bureau, but in his letter, filed June 6, 1907, he states that he sold his warrant in April, 1904, for \$500.

Case #6, Catharine Hogan, warrant No. 115607-160-55, issued October 23, 1903.—This is the sixth case of the series, and the third case in which the warrant is shown to have been delivered to Milo B. Stevens & Co.. Milo B. Stevens & Co., were the attorneys of record in the warrantee's application for pension, and filed her dec-
401 laration on December 11, 1902, in which she alleged that she was 62 years of age (see original declaration). On August 22, 1903, Eugene E. Stevens and Thomas R. Harney, jointly, filed the declaration of the warrantee for a military bounty land warrant and fee agreements executed under the provisions of the act of July 4, 1884, by virtue of which Milo B. Stevens & Co., were to receive a fee of \$25 in event of the successful prosecution of the claim. The

warrant was delivered to Milo B. Stevens & Co., on December 14, 1903, (see original papers). Having received this warrant, Milo B. Stevens & Co., caused to be endorsed thereon a form for an assignment of the warrant to Eugene E. Stevens, a member of said firm, and said assignment was executed by the warrantee on December 30, 1903. Thereafter, on January 27, 1904, Eugene E. Stevens assigned said warrant to Homer Guerry, of Washington, D. C. (see assignments on original warrant).

Catharine Hogan, of 710 South Medina st., San Antonio, Texas, aged 69 years, in her deposition of January 30, 1907, testifies that she made an application for a bounty land warrant through Milo B. Stevens & Co., of Washington, D. C., and made a contract to pay them \$25 for their services in securing the warrant; that John Kinnahan and Joe B. Johnston did the writing connected with the case, and that Mr. Johnston should have any letters which may relate thereto; that about a month after she sent in her application
402 for the land warrant Milo B. Stevens & Co., wrote to her, offering to buy the warrant when it was issued; that they wrote this letter to Mr. Johnston and he sent for witness to come to his office, which she did, and he there read her a letter from Stevens & Co., offering \$450 for the warrant; that witness does not remember that Stevens & Co., made any statement as to the value of the warrant; that Mr. Johnston advised witness that he thought that their offer was a very good one and that she had better sell it to Stevens & Co., for the amount offered, and so she had Mr. Johnston write and say she would take \$450 for the warrant, but she cannot state positively whether she signed any agreement to that effect, but believes that she did, this about a week after she made her application; that a long time after this witness went to Mr. Johnston's office and he had witness's warrant and a check for the money, and witness assigned the warrant in Mr. Johnston's office; that the warrant did not come into witness's possession except that she signed it; that the check was made payable to her for the sum of \$450; that she can not swear that the check was sent by Milo B. Stevens & Co., but believes that it was; neither does she know to whom she assigned the warrant, but understood at the time of the assignment that it was to Milo B. Stevens & Co.; that there was nothing deducted from the \$450 paid her; that Mr. Kinnahan knew about the offer made
403 by Stevens & Co., and it seems as though Kinnahan did not, and Johnston did, want her to sell the warrant, and that Kinnahan and Johnston fell out and Kinnahan told witness she could have gotten more for her warrant if she had let him.

(See report of Special Examiner Smith, pages 8 to 12.)

John Kinnahan, notary public and pension attorney, San Antonio, Texas, testifies that he was in partnership with George B. Johnston, but dissolved that relation in 1903; that he can not recall the circumstances connected with the prosecution of Mrs. Hogan's claim for a bounty land warrant, but does recall talking with Mrs. Hogan about the sale of her warrant after it was sold and of having told her that he could have gotten more money for the warrant. (See Special Examiner Smith's report pages 14 and 15.)

Sam B. Johnston, 122 West Houston street, San Antonio, Texas, testifies that at the time that Mrs. Hogan applied for her warrant in 1903, witness was associated with John Kinnahan, but before the warrant was issued Mr. Kinnahan went to work for himself and witness and witness's father completed the work in Mrs. Hogan's claim; that witness can not say whether Milo B. Stevens & Co. made any offer or agreement to buy the warrant before it was issued, and does not remember that any such agreement was made, but does

404 know that said firm made offers in connection with other cases prior to the issue of the warrant, offering from \$200 to \$300 for 160-acre warrants; that it is witness's present recollection that the agreement with Milo B. Stevens & Co. to buy the warrant of Catherine Hogan was made after the warrant was issued; that witness has a number of letters relative to bounty land warrants and with reference to the case of Mrs. Hogan which witness will turn over to the special examiner for consideration in connection with said case and which letters were received by witness from Milo B. Stevens & Co.; that witness believes that he advised the claimant to sell her warrant to the firm for \$450 as that was the best offer that they could get at the time and Mrs. Hogan did sell her warrant to Milo B. Stevens & Co. for \$450 and received that amount; that Stevens & Co. sent the warrant to witness to have warrantee assign the warrant to them which was done and witness then returned the warrant to the firm with a draft attached on one of the banks in Washington, D. C.; that witness believes that the warrant was assigned to Milo B. Stevens & Co. by Mrs. Hogan about the middle of December, 1903; that according to the agreement which witness had with Milo B. Stevens & Co., witness was to receive a fee of \$50 in any case which Stevens & Co. purchased through witness, and in connection with this case, witness received a fee of \$50, and that witness knows that he and his father quit selling warrants to Milo

405 B. Stevens & Co. because they found they could get better prices from others and believes that they sold only two or three warrants altogether to said firm. (See Special Examiner Smith's report, pages 16 to 19.)

Pages 20 to 31 Special Examiner Smith's report are various letters written by Milo B. Stevens & Co., which read as follows:

"Milo B. Stevens & Company, Solicitors of Claims and Patents,
Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

H-W.

WASHINGTON, November 24, 1903.

Mr. Samuel B. Johnston, 222 Dolorosa St., San Antonio, Texas.

DEAR SIR: We have your favor of the 19th instant and we note what you say about Mr. John Kinahan. It was your firm that recommended Mr. Kinahan to us and that is why we employed him. He has sent us more or less business from time to time, but in the bounty-land cases he has treated us, as we believe, unfairly. He told us that the bounty-land warrants could be purchased for us at not more than \$200 for 160 acres. As soon, however, as we secured the

allowance of a few bounty-land warrants he run up the price to \$525 for each warrant. We secured the allowance of the following bounty-land claims:

Winnifred Semlinger, 320 North St., San Antonio;
James Salter, 1123 N. Floras St., San Antonio;
Catherine Hogan, 710 S. Medina St., San Antonio;
Patrick Fox, 224 Callaghan Ave., San Antonio.

Of course we expected that the bounty-land warrants would be assigned to us, as promised, and in two of the cases we did not ask the applicants to execute the contracts for \$25. The result was that we lost \$30 in fees in two of the cases. In a large number of the bounty-land warrant cases offered us it is found that there is no bounty-land warrant due, or that the parties have already received the bounty-land warrant. In view of this fact we are compelled to

406 look into the title of a large number of applicants for the purpose of securing a very few good cases, and hence if we are not able to purchase the bounty-land warrants in the few cases at a reasonable price, it would hardly pay us to undertake the cases at all.

To what extent, if at all, have you had any experience in pension matters? What advantages, if any, has Mr. Kinahan over you in the matter of securing pension and bounty-land cases?

We presume that you understand that if you accept an agency from us that the papers in the cases cannot be executed before you as Notary Public.

Before making any change in the sub-agency we would like to hear from you a little further about Mr. Kinahan and about yourself. What we especially desire to know is, what experience you have had in the pension line, and what facilities you have for securing business. We also desire to know whether or not Mr. Kinahan has actually purchased the above-named bounty-land warrants for himself or for some one else. If he has not purchased them, can you get them, or any of them, and if so, at what price?

Very respectfully,

(Signed)

MILO B. STEVENS & CO."

"Milo B. Stevens & Company, Solicitors of Claims and Patents,
Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

H-W.

WASHINGTON, November 28, 1903.

Messrs. George B. Johnston & Son, 222 Dolorosa Street, San Antonio,
Texas.

GENTLEMEN: We have your favor of the 24th instant and in reply would say that on the 24th instant we wrote your Mr. Samuel B. Johnston fully on the subject of bounty-land matters and pension matters and until we hear from him in response to that letter it will be a little difficult for us to deal with you. Are we to understand

that Samuel B. Johnston and George B. Johnston & Son are identical.

We note that you say that you have arranged with two parties to have their bounty warrants sent you and that you are to sell same for them, and you ask that we name the best price that we are willing to pay for such warrants and to also state what commission we are willing to allow for making the sale to us. As explained
407 by us in our letter to Mr. Samuel B. Johnston, we have to do a whole lot of work in these bounty-land matters for which we get no compensation whatever, and hence in the few cases that we get allowed, it is our wish and desire to purchase them as cheaply as possible. We are perfectly willing, however, to allow you a substantial commission in each bounty-land case in which the warrant is actually secured for us. We want it thoroughly understood, however, in advance, that there must be genuine loyalty on both sides. We aim to treat you fairly in these matters and, naturally, we expect the same sort of consideration at your hands. Of course we do not care to refer bounty-land warrant clients to you if you are going to purchase them at your own price and charge us as dearly for them as you feel we ought to pay. We want you to act for us in the bounty land matters to the extent of purchasing them for us at the lowest possible price and then look to us for a substantial, and we may say, liberal, commission in each case. It will therefore be more satisfactory perhaps for you to let us know the lowest cash price you can secure the warrants for and then tell us what sort of a commission from us will be satisfactory to you. If we can handle the warrants at the price you name, including your commission, we shall be glad to purchase them.

We are sending you herewith a blank form of assignment in bounty-land cases. This form is to be endorsed on the back of the warrant, filling in the places checked, but do not fill in the places not checked.

The warrant, when thus assigned, may be sent to the National Metropolitan Bank, Washington, D. C., with a letter instructing the bank to deliver the warrant to us upon our paying to the bank the amount stated in your letter to the bank, including, if you wish, your commission. If you prefer, however, not to include your commission and leave that out of the consideration, we will promptly remit the same to you direct.

The trouble with Mr. Kinahan was simply this: We had us look up about 40 or 50 cases for the purpose of finding about ten or twelve that were any good. The understanding was that we were to get the bounty-land warrant of 160 acres for \$200, and that we were to pay him a substantial commission in each case for securing the bounty-land warrants for us. He discovered that the bounty-land warrants were worth more than \$200 and forthwith he proposed to take them for himself or secure them for some one else unless we were willing to pay him practically twice \$200 for them. That certainly was unfair to us, especially in view of the fact that he knew the great amount
408 of work that he had put upon us in the cases in which nothing whatever was found to be due. As before stated, we are perfectly willing to divide up the profits in these bounty-land

matters, but we ought to go into it with an honest and fair understanding as to what we want to do and then live up to it. To be perfectly frank with you, we do not care to enter into any arrangements with you or with any one else in bounty land matters or in pension matters without first having a fair understanding as to what is to be expected of each of us. If that sort of an understanding cannot be had, then no arrangements can be made with us.

If necessary, you can wire us at our expense when you get hold of a bounty-land warrant, as to the lowest cash price you can secure it for and let that price include your commission.

Very respectfully,
(Signed)

MILO B. STEVENS & CO."

"Milo B. Stevens & Company, Solicitors of Claims and Patents,
Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

H-W.

WASHINGTON, *December 4, 1903.*

Messrs. George B. Johnston & Son, 222 Dolorosa Street, San Antonio,
Texas.

GENTLEMEN: We have your favor of recent date enclosing a letter from Mrs. Catharine Hogan requesting that hereafter we direct all mail or communications regarding her business, in your care. It is true that she has sent us our fee of \$25 in her bounty-land warrant case, because we secured its allowance for her. Of course we do not know what sort of an order, if any, she gave Mr. Kinahan concerning the bounty-land cla- We would suggest, however, that you have her sign the enclosed letter addressed to the Honorable Commissioner of Pensions and have it properly witnessed by two persons, and then send it to us and we will secure the warrant and send it to her through you. Find out from her, please, what is the lowest cash price she will accept for the warrant and tell us what commission will be satisfactory to you for securing the assignment of the warrant for us. If you can get her to name a reasonable price for it, we are

perfectly willing to make your commission a very liberal one,
409 and in sending her the warrant through you we will prepare a proper assignment, in accordance with the official form, on the back of the warrant to be executed by her.

Very respectfully,
(Signed)

MILO B. STEVENS & CO."

"Office of Milo B. Stevens & Company, Solicitors of Claims and Patents, Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

H-W.

WASHINGTON, *December 28, 1903.*

Mr. Samuel B. Johnston, 222 Dolorosa St., San Antonio, Texas.

DEAR SIR: What is the cause of delay in sending on the bounty-land warrant of Mrs. Catherine Hogan? We sent it to you on the

14th instant and have received from you a registry return receipt for the letter that contained the warrant.

If you wish to send us pension cases for prosecution and wish to purchase bounty-land warrants for us, it is important that you answer our letter of the 17th instant.

You have sent us no pension cases nor bounty-land cases since Mr. Kinahan left your office. What is the trouble?

Very respectfully,
(Signed)

MILO B. STEVENS & CO."

"Office of Milo B. Stevens & Company, Solicitors of Claims and Patents, Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

H-W.

WASHINGTON, *January 5, 1904.*

Mr. Samuel B. Johnston, San Antonio, Texas.

DEAR SIR: We have your favor of the 31st ult., and in reply would say that in the pension claims that you may hereafter
410 send us, in which we receive a fee of \$25, we are willing to allow you \$10 of said fee. In the pension claims, however, in which our fee is less than \$25, but not less than \$10, we are willing to allow you one-third of said fee; and in the bounty-land cases in which we receive a fee of \$25, we are willing to allow you one-fifth of the fee. For every bounty-land warrant of 160 acres the assignment of which you actually secure for us, we are willing to allow you a commission of \$50, payable when we accept the assignment of the warrant.

We do not find that you sent us the pension claim of Mrs. Colding; nor do we find that you sent us the bounty-land case of Luther Sargent. You did send us, however, the pension case of Mrs. Conover and due credit will be given you for that case.

We hope that you will soon be able to send us some other business.

Very respectfully,
(Signed)

MILO B. STEVENS & CO."

"Office of Milo B. Stevens & Company, Solicitors of Claims and Patents, Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

H-W.

WASHINGTON, *January 11, 1904.*

Mr. Samuel B. Johnston, San Antonio, Texas.

DEAR SIR: Replying to your favor of the 7th instant we would say that we do not care to purchase the bounty-land warrant of Mrs. Semlinger or any one else at the price mentioned in your letter. It would be impossible for us to pay any such price and still make a profit for ourselves. If Mrs. Semlinger can get the price that you mention that she has been offered for her warrant, then she had better sell it.

Have you entered into correspondence with any one else than our-

selves offering to sell bounty-land warrants? We ask this question because we would like to know to what extent you are representing us as well as yourself.

Very respectfully,
(Signed)

MILO B. STEVENS & CO."

411 "Office of Milo B. Stevens & Company, Solicitors of Claims and Patents, Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

H-W.

WASHINGTON, *January* 12, 1904.

Mr. Samuel B. Johnston, San Antonio, Texas.

DEAR SIR: We are sending you herewith a certified check for \$47.75, your commission in the case of Catherine Hogan. The National Metropolitan Bank made a charge of \$2.25, and this amount we deducted from your commission of \$50, as per your directions.

Very respectfully,
(Signed)

MILO B. STEVENS & CO."

"Office of Milo B. Stevens & Company, Solicitors of Claims and Patents, Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

H-W.

WASHINGTON, *March* 2, 1904.

Mr. Samuel B. Johnston, 222 Dolorosa St., San Antonio, Texas.

DEAR SIR: Replying to your favor of the 25th ult. in the Semlinger case, we would say that it will be out of the question for us to pay \$500 for the bounty-land warrant and then pay you \$25 for securing the assignment of it for us. We had a lot of trouble with the case and we only got a fee of \$10. out of it.

Of course if you cannot purchase the warrant from her for less than \$500, then that is not your fault and we have no cause for complaint. We are constrained to believe, however, that in these bounty-land matters you are laboring under a misapprehension as to the relations existing between you and ourselves. In the first place, if you are to represent us in the purchase of bounty-land warrants we expect you to purchase them at the lowest possible price.

412 The fact that the owner might be able to get a higher price for the warrant if she or he were told where such a price could be had, is quite another question. Of course if a person says "I will not take less than \$500 for the bounty-land warrant", and you are not able to purchase it at a less price than \$500, then we must either pay the \$500 or give up the matter, but simply because we are compelled to pay \$500 for one bounty-land warrant is no reason why we should be held up, as it were, by you, as our agent, and be compelled to pay the same price for every warrant. That is not soliciting the purchase of bounty-land warrants in our favor. In said case you are really acting more in the interest of the owner of the warrant than you are acting in our interest. We do not want

you to act for the owners of the warrants, but act for us, especially if we are to pay you for doing so. We do not suppose for one moment that you are being paid by both sides. Take for instance the case of Light S. Townsend: You wrote us sometime ago that if we secured the warrant for him he would take \$400 for it, provided we would give you a commission of \$50. Now in that event of the warrant being allowed you could hold it up, as it were, and say that we must pay him as much for his warrant as we paid Mrs. Semlinger, for instance, and allow you a commission of \$25 besides or else you would feel compelled to recommend Mr. Townsend to sell the warrant to some one else. That is not our idea of the proper relations that should exist between us and we may as well have an understanding about it now, because if we cannot have a better understanding than that, then our relations may as well cease.

You probably know that we cannot afford to pay \$500 for a bounty-land warrant and then pay you a commission of \$25 besides and expect any profit out of the transaction. The prices of warrants are much lower now than they were six months ago. It is now difficult to get more than \$3 per acre for them. We mean that it is difficult for us to get more than \$3 per acre for them. It is possible that within the next three or four months the prices may advance a little, but that is a chance that we would have to take if we should purchase the Semlinger warrant or any other warrant.

Now that we have made our position in the matter clear to you we should like to hear from you definitely concerning the Semlinger warrant as well as the warrants in the other cases that we are now prosecuting.

Very respectfully,
(Signed)

MILO B. STEVENS & CO.

P. S.—No action has, as yet, been taken in the Leonard case or in the Sargent case. M. B. S. & CO.”

413 “Office of Milo B. Stevens & Company, Solicitors of Claims and Patents, Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

H-W.

WASHINGTON, *March* 21, 1904.

Mr. Samuel B. Johnston, San Antonio, Texas.

DEAR SIR: We have your favor of the 5th instant and have carefully read all that you have had to say. The situation, as we view it, is like this: If you should run across some person having a bounty-land warrant for sale and you should offer it to us for a certain price and we should decline it, as a matter of course as well as a matter of business, it would be to your interest to try to sell it to some one else. But if we file and prosecute a bounty-land application we think that you, as our agent, should be able to get an agreement out of the party before he or she is approached by others for the purchase of the warrant. In other words, we hardly think it is fair to have your own clients offer to sell their bounty-land warrants to others unless and until we decline to purchase them. We certainly ought to be

able to control all of the business of our clients and to the exclusion of others. That is the point that we sought to make in our former letter.

We may say to you that we have had no difficulty in purchasing bounty-land warrants located at elsewhere than in San Antonio. However, we will depend upon you to do the best that can be done for us, but if we cannot handle a warrant at a profit to ourselves, of course we will decline to purchase it.

As soon as the Townsend case is settled we will notify you.

Very respectfully,

(Signed)

MILO B. STEVENS & CO.

Mrs. Hogan, the warrantee, in her statement attached to the face of the special examiner's report, states that since May 10, 1907, she has received from Milo B. Stevens & Co., a check for \$147.75, 414 representing the difference in the amount which said firm paid for the warrant shortly after its issue, and the amount for which they state the warrant was sold.

Paul D. Rust, of Drummond, Wisconsin, on January 26, 1907, states that he purchased the warrant of Catherine Hogan, widow of Andrew Hogan, No. 115607, for 160 acres, together with another warrant for 160 acres, in April, 1905, for \$1472, and that his Memoranda says that he paid \$4 per acre for the warrants, and he does not know what the \$192 was for. (See original statement attached to the face of Special Examiner Smith's report.) The original assignment of Homer Guerrey to Paul D. Rust, attached to the warrant, shows that the assignment was made on February 11, 1904.

Homer Guerrey, of 621 13th st., NW., Washington, D. C., in his deposition of November 26, 1906, testifies that on January 30, 1904, he purchased from Milo B. Stevens & Co., the warrant of Catherine Hogan, No. 115607-160-55, for the sum of \$600, and that on other occasions he bought other warrants from Milo B. Stevens & Co. (See report of Special Examiner John W. Hall, pages 10 and 11.)

As will hereafter appear this client received a larger percentage of the actual value of her warrant than any other client of the firm whose testimony has been taken in connection with these proceedings. This case is used in the citation.

415 Case No. 7, Winifred Semlinger, warrant No. 115608-160-55, issued October 23, 1903.—Milo B. Stevens & Co., were the attorneys of record in the application of the warrantee for pension, and on September 15, 1902 filed her declaration for pension, in which she alleged that she is 60 years of age. The warrant was forwarded to the warrantee direct (see original papers), and she states that about five months after the warrant was issued she sold it for the sum of \$475 to Charles Arnold, of San Antonio, Texas.

Case No. 8, Charles M. Durat, alias Charles Nutter, warrant No. 115612-160-55, issued December 23, 1903.—Milo B. Stevens & Co. were the attorneys of record in the warrantee's application for pension, and from the testimony on file therein it appears that the warrantee attained the age of 70 years in 1896 (see pension papers). The warrant was delivered to Milo B. Stevens & Co. on January 7,

1904, and the files of the Land Office fail to show that it has been returned as located. This case has not been investigated.

Case No. 9, Mary Keating, warrant No. 115613-160-55, issued December 23, 1903.—Milo B. Stevens & Co., were the attorneys of record in the warrantee's application for pension, and on September 24, 1902, filed a declaration in which her age is given as 416 62 years. The warrant was delivered to the warrantee and the case has not been investigated, but the warrantee states that she sold her warrant for \$500, but can not recall the date of the sale (see original letter with the papers).

Case No. 10, George Bull, deceased, warrant No. 115617-160-55, issued January 27, 1904.—Milo B. Stevens & Co. were the attorneys of record in the warrantee's application for pension and in connection therewith filed a declaration on September 9, 1901, in which it is alleged that the applicant is 79 years of age, and on February 18, 1903, said firm filed testimony purporting to show that neither their client nor his wife possessed any property whatsoever, real, personal, or mixed; that their client was totally disabled for the performance of any manual labor, and that the amount of his pension was insufficient for his support (see original papers in the pension claim). The warrant was delivered to Milo B. Stevens & Co., on February 8, 1904 (see endorsement on jacket), and said firm caused to be endorsed thereon a form for an assignment of said warrant in blank, which said form was executed by the warrantee on February 9, 1904. On February 11, 1904, Milo B. Stevens & Co., submitted to the Land Office said warrant bearing said assignment to which the signature of Thomas R. Harney appears as one of the attesting witnesses, though the assignment purports to have been executed in 417 Orange county, New York, and the office held that it would respect the assignment when the name of the assignee had been properly written therein. The name of Herbert Dierks was inserted in the assignment, and on July 16, 1903, Herbert Dierks assigned the warrant to Joe Fuqua, of Texarkana, Arkansas. This case has not been investigated by this Bureau, but it is stated in letter filed that \$200 was paid and \$255.60 refunded.

Case No. 11, Jane Kennedy, warrant No. 115618-160-55, issued January 27, 1904.—Milo B. Stevens & Co. were the attorneys of record in the warrantee's application for pension. The warrant was delivered to the warrantee. There has been no investigation of this case, but in her letter, filed June 7, 1907, the warrantee states that she sold her warrant sometime during the year 1905, for \$500.

Case No. 12, Jane Hollenbeck, warrant No. 115624-160-55, issued March 2, 1904.—Milo B. Stevens & Co. were the attorneys of record in the pension claim, and the warrant was delivered to and receipted for by them on March 29, 1904. On receipt of the warrant, Milo B. Stevens & Co. caused to be endorsed thereon a form for an assignment in blank, which was executed by the warrantee on April 14, 1904, and on April 15, 1904, Milo B. Stevens & Co. submitted the warrant to the Land Office for the approval of the assign- 418 ment. This case has not been investigated, but in her statement, received June 4, 1907, the warrantee alleges that on

April 15, 1904, Milo B. Stevens & Co. paid her \$170 for the warrant, and that since May 10, 1907, she has received from said firm a check for \$285.60, representing the difference in the amount originally paid to her and the amount for which the warrant is said to have been sold by the original assignee, and she transmitted with her letter a statement of account from Milo B. Stevens & Co., dated May 10, 1907, from which it appears that the \$170 mentioned by the warrantee included the fee; that is to say, she received \$160, net, and that the firm refunded \$285.60, after having sold the warrant for \$465.60. (See original papers attached to jacket.)

Case No. 13, Kate Wurzbach, warrant No. 115627-160-55, issued March 2, 1904.—Milo B. Stevens & Co. were the attorneys of record in the pension claim, and as such, on December 5, 1902, filed an affidavit of the claimant in which she alleged that she was 52 years of age. The warrant was delivered to the warrantee. There has been no investigation of this case.

Case No. 14, Elizabeth M. Champie, warrant No. 115629-160-55, issued March 23, 1904.—Milo B. Stevens & Co. were the attorneys of record in the pension claim, and the warrant when issued was delivered to the warrantee. There has been no investigation in this case.

419 Case No. 15, Elizabeth Cannon, warrant No. 97073-120-55, issued March 23, 1904.—Milo B. Stevens & Co. filed the application for the warrant on February 11, 1904, together with their letter of February 5, 1904, in which they request that the claim of their client be made special "in view of the fact that Mrs. Cannon is now over 81 years of age and in a very enfeebled condition." (See declaration and letter therewith.) The warrant was surrendered to and receipted for by Milo B. Stevens & Co. on March 29, 1904, and said firm prepared thereon a form for an assignment of the warrant in blank which was executed by their client on March 31, 1904. (See original warrant and assignment thereon.) On April 12, 1904, the assignment was submitted for the approval of the Land Office, and was approved in blank. This case has not been investigated but in her letter filed June 3, 1907, the warrantee states that Milo B. Stevens & Co. paid her \$150 for the warrant when originally assigned, stating that the warrant was worth about \$150, and that since May 10, 1907, she has received a check for \$189.20, representing the difference in the amount originally paid her by Milo B. Stevens & Co. and the amount for which they sold the warrant. It will be seen that the advanced age and enfeebled condition of

their client was such as to prompt Milo B. Stevens & Co. to
420 appeal to the Commissioner of Pensions to make her case special, but was not sufficient to appeal to the sympathy of the members of said firm as against their own interest, since they actually withheld from her over one-half of the amount for which they sold her warrant. A lady over 81 years of age, in a feeble condition, is ordinarily regarded as having some claim upon the sympathy of mankind.

Case No. 16, Robert Clark, warrant No. 115630-160-55, issued March 23, 1904.—The warrantee in this case is 89 years of age (see

declaration filed under the act of February 6, 1907), and was 85 years of age when, on April 4, 1904, the warrant which Milo B. Stevens & Co. had secured to be issued was delivered to that firm. In their letters of February 4 and February 16, 1904, they state that their client is over 86 years of age; that they are informed that he is in a very precarious condition, and that they request, for the reasons stated, that the case be made special. On receipt of the warrant, Milo B. Stevens & Co. caused to be prepared thereon a form for an assignment of the warrant in blank, which said assignment was executed in blank by the warrantee on April 8, 1904. On April 13, 1904, the warrant, with the assignment thereon, was submitted for the approval of the Land Office, and was approved in blank. This case has not been investigated, and no response has been made

421 to a letter from this Bureau requesting information as to the amount which the warrantee received for his warrant from Milo B. Stevens & Co. shortly after the issue of said warrant and whether an additional payment had recently been made.

Case No. 17, Henry W. Fitzgerald, warrant No. 97075-120-55, issued April 26, 1904.—Milo B. Stevens & Co. were the attorneys of record in the pension claim. On March 25, 1907, said firm filed a declaration under the act of February 6, 1907, in which their client alleged that he was 86 years of age. Milo B. Stevens & Co. filed the application for the warrant on November 24, 1903, and in their letters of December 27, 1903 and January 18, 1904, request that, in view of the fact that their client is 82 years of age and that they have been informed that he is so helpless that he needs and requires the aid and attendance of another person, his application be made special. The warrant was delivered to and receipted for by Milo B. Stevens & Co., on April 26, 1904, and said firm caused to be endorsed thereon a form for an assignment of the warrant to Eugene E. Stevens, a member of the firm, which said assignment was executed by the warrantee on May 5, 1904, and on May 11, 1904, Eugene E. Stevens executed an assignment of said warrant to Daniel M. Carter (see original warrant). This case has not been

422 investigated, but in his letter filed June 7, 1907, the warrantee states that said firm paid him \$200 for his warrant shortly after its issue, and that since May 10, 1907 he has received a check for \$139.20, representing the difference in the amount originally paid him for the warrant and the amount for which said attorneys sold the same.

Case No. 18, Jane Leonard, warrant No. 115343-160-55, issued April 27, 1904.—Milo B. Stevens & Co. were the attorneys of record in the claim for pension. On the issue of the land warrant it was transmitted to the warrantee. No investigation has been made in this case, but in her letter filed June 7, 1907, the warrantee states that she sold her warrant to W. E. Moses, or W. E. Moses & Co., about September 2, 1904, for \$470.

Case No. 19, Elvira E. Graves, daughter of George Teel, warrant No. 49456-80-55, issued April 27, 1904.—Milo B. Stevens & Co. were the attorneys of record in the application for the warrant, filed

October 5, 1903. No fee agreements were filed in this case, and they were certified a fee of \$10 for their services as provided by the act of July 4, 1884. The warrant was issued on April 27, 1904, and on May 19, 1904, was delivered to and receipted for by Milo B. Stevens & Co. On May 23, 1904, the warrantee executed a blank assignment on said warrant, and the warrant was subsequently sold to Abraham Matthews, of Marquette, Mich., (see original warrant).

423 Elvira E. Graves, R. F. D. No. 1, Red Boiling Springs, Tennessee, testifies that Milo B. Stevens & Co. procured for her a duplicate land warrant about two years ago and that she assigned said warrant to Milo B. Stevens & Co. in consideration of the sum of \$100; that she can not swear positively that her agreement with said firm was made before or after the warrant was issued; that she never had said duplicate warrant in her possession except at the time she assigned it to Milo B. Stevens & Co.; that she received a check for \$100, Milo B. Stevens & Co. having made the proposition to her that they would pay her that amount for the warrant and bear the expenses of procuring the duplicate, and that witness made an agreement to let them have the warrant on the terms stated. Elvira E. Graves aged 66 years. (See Special Examiner Sullivan's report, pages 9 and 10.)

James W. Draper, of Gainesboro, Tennessee, testifies that Elvira E. Graves is his mother-in-law; that witness took up the matter of obtaining his mother-in-law a duplicate warrant by first writing to George E. Lemon; that Milo B. Stevens & Co., of Washington, D. C., answered his letter, stating that Mr. Lemon was dead and that they had his business; that Milo B. Stevens & Co. required Elvira E. Graves to sign a contract to deliver the land warrant to them in consideration of the sum of \$100, Milo B. Stevens & Co. to
424 bear all the expenses in the prosecution of the claim; that it was required that this agreement be signed before the firm would agree to prosecute the claim; that witness received from Milo B. Stevens & Co. \$20 for the services rendered by him in getting up the claim; that the duplicate warrant came to witness at Gainesboro, Tennessee, with the check for \$100 for Elvira E. Graves, and witness brought Mrs. Graves to Gainesboro, where she signed or executed the assignment and witness mailed the warrant back to Stevens & Co.; that the proposition to assign the warrant for \$100 came from Milo B. Stevens & Co., they stating that that was all the warrant would be worth; that Government land was worth \$1.25 per acre and that a warrant for 80 acres would be worth \$100, and neither witness nor warrantee had any means of knowing whether the land warrant would be worth more than \$100, and that the duplicate warrant was really never in the custody of Mrs. Graves; that she just signed the assignment as per agreement previously made and witness sent the warrant back to the firm by registered mail. (See Special Examiner Sullivan's report, pages 11 to 12.)

Nettie S. Graves-Draper, of Gainesboro, Tennessee, testifies that Elvira E. Graves, the warrantee, is her mother; that witness knew of the correspondence which passed between Milo B. Stevens & Co.

and witness's husband concerning the application for a duplicate warrant; that Stevens & Co. required witness's mother to sign an agreement to sell said warrant to them in case they got it for her and gave her to understand that it would be worth \$100; that before they would take up the case for her, they required her to sign such an agreement; that they sent her a check for \$100 at the time the duplicate warrant came, and warrantee signed the assignment thereon in pursuance of the agreement previously entered into with Milo B. Stevens & Co. (See Special Examiner Sullivan's report, pages 14 and 15.)

F. J. Schulties, of Marquette, Michigan, testifies that he is in the office with Abraham Matthews and handles his business for him when he is away from Marquette; that upon an examination of the records he finds that on June 23, 1904, he wired J. W. Smith, an attorney, of Washington, D. C., now deceased, as follows: "Wire me best price on two eighty-acre warrants." That on the same day that he wired Mr. Smith: "Please send warrant on terms mentioned," and he sent the warrant by express on June 24, 1904, and it was received on the 28th of that month; that the price paid for the warrant was \$364.90, this for 80 acres; that the warrant was used in locating the tract of land described in witness's deposition, and

the amount paid was sent by draft direct to J. W. Smith, Washington, D. C.; that they never had any dealings with Milo B. Stevens & Co.; that witness finds a letter-press copy of Mr. Smith's telegram, as follows: "Have none. Have option till Saturday on one eighty at four twenty-five. Can find none other for less than five. My commission seven per cent." That witness presumes the warrant was assigned to Mr. Matthews in blank as he always fills in the name on the assignments himself. (See Special Examiner Bone's report, pages 7 to 9.)

In letter filed June 3, 1907, Mrs. Elvira E. Graves states that since May 10, 1907, she has received from Milo B. Stevens & Co. a check for \$230, representing the difference in the amount which was paid her for her warrant shortly after its issue, and the amount for which the warrant was said to have been sold by Milo B. Stevens & Co. (See original letter.) This case was used in the citation.

Case No. 20, Bartholomew Shannon, warrant No. 115646-160-55, issued June 17, 1904.—Milo B. Stevens & Co. were the attorneys of record in this case, but the warrant was delivered to the warrantee. The case has not been investigated, but, in letter filed June 8, 1907, the administrator of the warrantee's estate states that the warrant was sold to Mr. E. C. Drew, on September 8, 1904, for \$500.

Case No. 21, Catharine E. Maxwell, warrant No. 115647-160-55, issued June 17, 1904.—Milo B. Stevens & Co. were the attorneys of record in this case, which has not been investigated, but in her letter filed June 7, 1907, the warrantee states that in 1904, Milo B. Stevens & Co., of Washington, D. C., paid her \$350 for the warrant, and that since May 10, 1907, she has received a check from Milo B. Stevens & Co. for \$210, representing the difference in the amount originally paid her for the warrant and the amount for which it was said to have been sold by said firm.

Case No. 22, Daniel P., son of James McQuage, warrant No. 115651-160-55, issued July 21, 1904.—Milo B. Stevens & Co. were the attorneys of record in this claim, and the warrant was surrendered to and receipted for by them on August 2, 1904. (See original papers.) On receiving said warrant, said firm caused to be prepared on the back thereof an assignment in blank, which said assignment was executed by the warrantee on August 5, 1904. The name of W. E. Moses was subsequently inserted in said assignment and thereafter the warrant was assigned to the W. E. Moses Land Scrip and Realty Company of Denver, Colorado, and by said company assigned to Daniel W. McLeod, who used the warrant in making a location. This case has not been investigated, but in his letter filed June 5,

1907, herewith, the warrantee states that Milo B. Stevens & Co. paid him \$200 for the warrant shortly after its issue, and that since May 10, 1907, he has received from said firm a check for \$310, said to represent the difference in the amount originally paid him for the warrant and the amount for which the warrant was sold by said firm. (See original letter.) There will also be found a statement of account prepared by Milo B. Stevens & Co., showing that said warrant was sold by the firm for \$520; that they paid to their client \$200 on August 15, 1904; that they were entitled to a fee of \$10 for their services in the prosecution of the claim, and on May 10, 1907, transmitted to him a certified check for \$310, in payment of balance due. (See original paper in jacket.)

Case No. 23, Mattie Hughes, warrant No. 115653-160-55, issued July 27, 1904.—Milo B. Stevens & Co. were the attorneys of record in the claim, but the warrant was transmitted to the warrantee direct. No investigation has been made in this case, but in her letter filed June 5, 1907, the warrantee states that on or about October 1, 1904, she sold her warrant for \$500.

Case No. 24, Pauline Clark and William L. Shirkey, minors of John Shirkey, warrant No. 97078-120-55, issued September 16, 1904.—On June 20, 1904, Eugene E. Stevens & Thomas R. Harney, jointly, filed the declaration in this case, executed by Pauline Clark, and on August 11, 1904, they, jointly, filed a power of attorney executed by William L. Shirkey. No fee agreements were filed in this case. The warrant was received and receipted for by Milo B. Stevens & Co. on September 30, 1904. (See original papers and receipt.) Having received said warrant of their client, Milo B. Stevens & Co. caused to be endorsed thereon a blank form for an assignment, which was executed by their clients on March 23, 1905. The name of Eugene E. Stevens, a member of said firm, was subsequently inserted in said assignment, and on April 20, 1905, said firm submitted the warrant, bearing said assignment, to the Land Office for approval, and it was approved. On April 22, 1905, Eugene E. Stevens assigned said warrant to John N. Hollcroft, of Little Rock, Arkansas, and Mr. Hollcroft used the warrant in making a location. (See original warrant and assignment.)

Pauline Clark, aged 60, of Victoria, Texas, testifies that she is a daughter of John Shirkey, who served in the war of 1812, and, with

her brother, made application for a bounty land warrant through Milo B. Stevens, of Washington, D. C. Her attorney, J. T. Pool, conducted all the correspondence with reference to the matter; that witness recalls that she signed a paper authorizing the Commissioner of Pensions to deliver the warrant to Milo B. Stevens & Co., but does not recall having signed any agreement to sell the warrant. In fact,

430 she is almost sure that she did not; but it was her understanding before the warrant was issued that Milo B. Stevens & Co., would buy the warrant; that they had stated that they were buying warrants and would allow witness \$150 for the warrant; that witness understood that Mr. Pool was to get \$25 and Stevens & Co., \$25 for their services; that witness does not know when the offer to purchase the warrant was made, but it must have been before the warrant was issued, and it was witness's understanding from the beginning that Stevens & Co., would buy the warrant as they had bought the warrant which had previously been issued to witness's husband; that witness does not recall that Stevens & Co., made any expression as to the probable value of the warrant; that about the first of October, 1904, the warrant was sent to Mr. Pool and he brought it to witness, and witness had it sent on to California for her brother to sign; that witness assigned the warrant, but can not be certain as to whether she assigned it to Milo B. Stevens & Co., or to some individual; that she gave the paper to Mr. Pool and does not know who he sent it to; that the check for \$150 was made payable to witness and that that amount was deposited to witness's credit, and that witness's brother died without having signed the assignment to the warrant. (See Special Examiner Smith's report, pages 6 to 9.)

J. P. Pool, of Victoria, Texas, testifies that he transacted the legal business for Mrs. Pauline Clark and her husband and carried
431 on most of the correspondence for her in securing a bounty land warrant in behalf of herself and her brother, William L. Shirkey through the firm of Milo B. Stevens & Co., of Washington, D. C., and that the warrant was issued in September, 1904; that witness can not recall whether or not there was any written agreement to sell the warrant to Stevens & Co., but it was witness's understanding that said firm would take the warrant at a certain price; that witness has copies of a number of letters written to Milo B. Stevens & Co., with reference to this matter, and also has letters written by them to Dupree & Pool which witness prefers not to surrender without the consent of Milo B. Stevens & Co., as they were personal letters; that this understanding as to the willingness of the firm to purchase the warrant was prior to its allowance, and it is witness's impression that there was some sort of a written agreement between Mrs. Clark and Stevens & Co., but witness can not be certain on that point; that witness believes that Stevens & Co., offered Mrs. Clark \$150 net for her warrant when issued, and it is witness's recollection that they made no statement, one way or the other, as to the value of the warrant, nor can witness state when they made the proposition to purchase the warrant, but it must have preceded the issuance of the warrant; that witness received two checks from Stevens & Co.;

one for \$150, and the other for \$25, the latter being the fee
432 for the services of witness and his partner in behalf of Mrs.

Clark; that witness is not sure as to whether the \$150 check was drawn to the order of his firm, or to the order of Mrs. Clark, but does recall that he cashed the check and deposited the amount to Mrs. Clark's credit; that there was some delay in the assignment of the warrant, arising out of the death of William L. Shirkey, he having signed the assignment before two witnesses but not having acknowledged it before he died and that the warrant had to remain until letters of administration were made out; that after the assignment was made out, witness returned the warrant to Stevens & Co., and they then sent the two checks mentioned above, which witness believes was some time in March, 1905. (See Special Examiner Smith's report, pages 10 to 14.)

John L. Hollcroft, of Little Rock, Arkansas, testifies that he bought warrant No. 97078, through E. B. Kinsworthy, for about \$4.50 per acre, and used the warrant on May 5, 1905, in locating; that the purchase was made through his attorney, the E. B. Kinsworthy above mentioned. (See Special Examiner Rawles' report, pages 7 and 8.)

E. B. Kinsworthy, attorney, Little Rock, Arkansas, testifies that by referring to his book he finds that he purchased warrant No. 79078 (?) (97078) from Mr. O. T. Wick, at the rate of about \$4.50 per acre, or \$540 for the warrant; that witness's book shows that the
433 warrant was issued to Pauline Clark and William L. Shirkey, children of John Shirkey, and that witness is not certain that \$4.50 was the exact price paid for the warrant, as it may have been a little more or a little less, and that the only party with whom he had dealings in connection with the purchase of this warrant was Mr. Wick. This case was used in the citation.

Case #25, John Clary, warrant No. 115661-160-55, issued September 29, 1904.—Milo B. Stevens & Co. were the attorneys of record in this case, and therein filed, on November 17, 1904, their client's declaration in which he alleged that he was 79 years of age (see original declaration). On April 29, 1904, Eugene E. Stevens and Thomas R. Harney, jointly filed a declaration for a bounty land warrant and duplicate fee agreements, executed in accordance with the provisions of the act of July 4, 1884. The warrantee died on May 14, 1906, and his widow is now an applicant for pension. On October 22, 1904, the warrant was delivered to and receipted for by Milo B. Stevens & Co. (See original papers with brief.)

William T. Russell, attorney, of Nocona, Texas, testifies that he was well acquainted with John Clary during his lifetime and did the notary work in his claim for bounty land, but it is witness's recollection that while the claim was pending, Milo B. Stevens & Co. offered Mr. Clary \$215 for the warrant when it should be
434 granted, and witness wrote two or three other parties for Mr.

Clary and got their bids, but Milo B. Stevens & Co. made the best bid and the warrant was sold to them for \$215; that witness is reasonably certain that there was no agreement or understanding between Milo B. Stevens & Co. and John Clary that the land warrant was to be sold to said firm, but pending the prosecution of the claim

Stevens & Co. made an offer for it, and that the land warrant was sent to Mr. Clary with a letter from Milo B. Stevens & Co., stating that if he wanted to take \$215 for the warrant to assign it to them and take the warrant to a bank and attach to it a draft on a Washington, D. C., bank, and as soon as the warrant and draft reached the Washington Bank the money would be paid to him and this course was pursued and in a few days a check for the money came; that witness is positive there were two or more bids for the land warrant, and that Stevens & Co. made the highest bid by at least \$15, and that witness has examined his correspondence and fails to find any letters with reference to the bounty land claim, and that witness acted as the notary public for Mr. Clary, and also as the notary for his widow in connection with her pension claim. (See Special Examiner Biller's report, pages 8 to 11.)

435 The original warrant bears endorsed thereon an assignment in blank prepared in the office of Milo B. Stevens & Co., and executed by the warrantee on October 29, 1904 (see-warrant). The name of Duncan G. Malloy, of Perry, Fla., was subsequently inserted in the assignment. On November 12, 1904, the warrant bearing the blank assignment was submitted to the Land Office by Milo B. Stevens & Co., and approved, and said warrant was used by Duncan G. Malloy in making a location. (See original papers in the Land Office jacket.)

Duncan G. Malloy, of Perry, Fla., testifies that he has purchased a large number of land warrants—thirty or thirty-five—from William E. Moses, of Washington, D. C., and has bought others. He can not say how many; that he has examined his files and can not find any record of the warrant issued to John Clary, warrant No. 115661, and has no recollection of having purchased such a warrant and can not remember from the description of the property whether he purchased the warrant; that he had a communication from the Register's Office at Gainesville, Fla., dated June 25, 1905, showing that he located warrant No. 115661, issued in the name of John Clary, but has nothing to show how much he paid for the warrant; that the warrants are sent to Perry for inspection, and purchasers pay the bank when they take their warrants; that witness has paid from \$3.80 to \$4.50 per acre for warrants; that \$3.80 was the lowest price and \$4.50 was the highest price which he has paid; that

436 witness has sometimes exchanged warrants with Angus J.

Conoly as a matter of accommodation, and it is possible that he has a record of this case; that witness hands the special examiner a letter from the W. E. Moses Land Scrip and Realty Co., dated Washington, D. C., December 9, 1905, and addressed to Malloy Brothers, Perry, Florida, with reference to warrant No. 115639, for 160 acres, which illustrates how such transactions were conducted; that witness purchased the warrant in question for \$4.50 and holds the Moses Company receipt; that a representative of the Moses company, a Mr. Jones, was in Perry, in January 1905, and he had four or five warrants with him and possibly the Clary warrant may have been one of them; that the prices stated by the witness above refers to 160-acre warrants, smaller warrants being higher in price per acre.

(See report of Special Examiner Davis, pages 4 and 5.) This case was used in the citation.

Case No. 26, Sallie Gipson, warrant No. 49482-80-55, issued October 17, 1904.—Eugene E. Stevens and Thomas R. Harney, on September 8, 1904, jointly, filed a declaration executed by Sallie Gipson, aged 82, and duplicate fee agreements executed in conformity with the provisions of the act of July 4, 1884. They, jointly, prosecuted the claim to a successful issue, and on November 7, 1904, the warrant was surrendered to and receipted for by them. (See original papers herewith.) Having received said warrant, Milo B. Stevens & Co. caused to be endorsed thereon a form for an assignment in blank which was executed by their said client on December 23, 1904, and the name of Charles B. McLeod, of Perry, Florida, was subsequently inserted in said assignment. On January 4, 1905, Milo B. Stevens & Co. submitted the warrant, bearing the blank assignment, to the Land Office, and said assignment was approved by the Land Office. Charles B. McLeod used the warrant in making a location at the Gainesville, Florida, land office. (See original Land Office papers.)

Sallie Gipson, aged 85, of Overton, Texas, testifies that she is a pensioner, as the widow of Frederick Gipson, at the rate of \$8 per month, and that she obtained a bounty land warrant for 80 acres on his service about two years ago; that while witness was with her brother, at Pepper, Texas, she got a notice that there was a land warrant for her, asking what she would take for it; that witness's nephew said he would give her \$70 for it; that witness does not remember who advised her that there was a land warrant for her, but they wrote there was one for her and sent papers for her to fill out and told her to make proof so she could get it; that witness supposed this letter was from headquarters, where she got her pension from; that witness does not know whether the letter was from Milo B. Stevens & Co., of Washington, D. C., but she guesses that it was; that witness generally has some persons read her letters for her; that on hearing read a letter from Milo B. Stevens & Co., dated August 11, 1904, she is satisfied that this is the letter which she got; that when they sold one land warrant in Arkansas, they understood there was another one due them, and witness does not know the reason why she had not gotten it, and she had the blanks sent her filled out and sent right back to them; that a few days before witness left for Overton, she agreed to take \$100 for the land warrant; that they never made any definite agreement, but she just agreed to take \$100 for the warrant; that witness does not know whether she ever got the land warrant in her possession; that she told them she would take \$100 for the warrant and that when they wrote they had the warrant for her and asked her what she would take for it, she said \$100; that when she got the money, the notary public brought the paper to her; that she did not make a contract with Milo B. Stevens & Co. to sell them the warrant in case it should be granted when she sent her first papers to them; that she never agreed to sell her warrant to anybody at all before it was granted, and that Mr. A. J. Smith, at Overton, Texas, knows all about the

warrant being transferred to Milo B. Stevens & Co. and how witness got the money as he cashed the check for her, and that witness has no letters from Milo B. Stevens & Co. (See Special Examiner

Tracy's report, pages 8 to 10.)

439 A. J. Smith, Overton, Texas, testifies that he keeps Sallie

Gipson's pension papers in his safe for safe-keeping, and that in looking over these papers he finds a letter from Milo B. Stevens & Co., of Washington, D. C., and dated August 11, 1904, which he hands to the special examiner; that the first knowledge witness had of this bounty land matter probably came from the letter from Stevens & Co., dated August 11, 1904, which is the only one from that firm which witness can find; that witness does not remember when Mrs. Gipson made a contract with these parties, either written or implied, to sell the warrant to them; that as well as witness can remember, Stevens & Co. made an offer of \$100 for the warrant; that witness does not remember whether it was a definite offer, or whether it was made before or after the warrant was issued; that as well as witness can recall, Mrs. Gipson accepted the offer of \$100 and they then sent her some papers and blanks to be made out, and that these papers were sent to the Riggs National Bank of Washington City, and in turn they sent a bank draft for \$100, made payable to Sallie Gipson, as witness now recalls, and she turned the draft over to witness and witness gave her credit for it on the books; that witness thinks that there was a letter of instructions accompanied the papers with reference to the transfer, but does not know where that letter is, and that warrantee is witness's wife's aunt by marriage. (See Special Examiner Tracy's report, pages 11 and 440 12.) The letter referred to in the testimony of witness next above reads as follows:

"Office of Milo B. Stevens & Company, Solicitors of Claims and Patents, Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

F. W.

WASHINGTON, August 11, 1904.

Mrs. Sallie Gipson, Pepper, Texas.

MADAM: Upon an examination of the official records of the Pension Bureau we find that your late husband received a bounty-land warrant for 80 acres only, consequently there would appear to be due you a warrant for 80 acres to make up the full 160 acres due on account of the soldier's service. We are, therefore, sending you herewith an application for bounty-land warrant, together with fee contracts, to cover the amount of our fee for prosecuting the case, and we will thank you to have said papers promptly executed and returned to us. Now, what you should do is this:

1. Sign the application where we have made the letter "A," and have two witnesses sign to the left of your signature. Then have two witnesses having the required knowledge sign where we have made the letter "O." The notary public should then sign where we

have made the letter "B" and impress his seal of office to the left of his signature. Be careful to fill in all blank spaces as nearly as possible.

2. You should then sign both copies of the fee contracts where we have made the letter "C" and have two witnesses sign to the left of your signature on both copies. The notary should then sign both copies where we have made the letter "D," and impress his seal of office on both copies to the left of his signature.

If we succeed in securing the warrant for you, advise us whether you will be willing to assign same to us upon a fair cash consideration. If so, please state the lowest cash price you are willing to accept for said warrant.

Kindly attend to this matter at once so we may proceed with the case.

Very respectfully,
(Signed)

MILO B. STEVENS & CO."

441 Charles B. McLeod, of Dexter, Florida, testifies that he purchased what he supposes was the Gipson Land Warrant through Mr. Calhoun, clerk of the court, at Perry, Florida, for \$4.75 per acre; that witness never saw the warrant, and does not remember the exact date of purchase, but it was used immediately. (See Special Examiner Davis's report, page 7.)

John C. Calhoun, clerk of the district court, Perry, Florida, testifies that he is acquainted with Charles B. McLeod personally, but has no recollection of having sold him any bounty land warrant; does not remember having done so, and did not keep any record of the warrants which he handled; that witness has had some business with Milo B. Stevens & Co., of Washington, D. C., and his arrangement with them was not to pay them for a warrant to exceed \$3.50 per acre; that if Mr. McLeod states that he paid \$4.75 per acre for the warrant, witness could not have sold the warrant to him; that it was witness's practice to order warrants when parties came in and asked for them, and if a warrant could not be obtained that he would write to Milo B. Stevens & Co. and ask if they could not get one for them, and that he made 10% commission on the purchase of warrants. (See Special Examiner Davis's report, page 8.)

In her statement filed June 3, 1907, Mrs. Gipson acknowledges the receipt of \$250 from Milo B. Stevens & Co. since May 10,
442 1907, representing the difference in the amount paid her for her warrant shortly after its issue, and the amount for which said warrant was sold. (See original papers.) This case was used in the citation.

Case # 27, Josiah Chambers, warrant No. 115680-160-55, issued January 17, 1905.—On June 8, 1904, Milo B. Stevens & Co. were the attorneys of record in the application for bounty land, and on February 20, 1905, the warrant was delivered to and receipted for by them as shown by the original papers. In affidavit filed by Milo B. Stevens & Co., on January 9, 1905, the warrantee alleged that he was 84 years of age, and by reason of that fact the adjudication of the claim was advanced on the motion of Stevens & Co., filed on the

same day. (See original papers.) Having received said warrant, an endorsement of a form for an assignment in blank was made thereon, and the assignment was executed on July 31, 1905. The name of Homer Guerri, of Washington, D. C., was subsequently inserted in the assignment, and on August 14, 1905, Homer Guerri assigned the warrant to Sanford H. Bollinger. This case has not been investigated, and this Bureau has no information with reference to the amount received by the warrantee for his warrant.

Case #28, Margaret Monaghan, warrant No. 115689-160-55, issued July 7, 1905.—Milo B. Stevens & Co. were the attorneys of record in the warrantee's application for pension, and on November 20, 1903, filed her declaration in which she alleged that she was 64 years of age. On July 13, 1904, Eugene E. Stevens and Thomas R. Harney, jointly, filed the declaration for a military bounty land warrant and fee agreements executed in conformity with the provisions of the act of July 4, 1884. They prosecuted the claim to a successful issue and the warrant was delivered to and receipted for by Milo B. Stevens & Co. on July 19, 1905. (See original papers.) Having received said warrant, Milo B. Stevens & Co. caused to be endorsed thereon a form for an assignment of the warrant to Thomas R. Harney, a member of said firm, and said assignment was executed by the warrantee on August 11, 1905. On September 7, 1905, Thomas R. Harney assigned said warrant in blank, and the name of W. R. Abbott, of Sebastian, Arkansas, was subsequently inserted in said assignment, and Mr. Abbott used the warrant in making a location. (See original papers.)

Margaret Monaghan, aged 67, of Carson, Washington, testifies that she can neither read nor write, and has no occupation; that she is a pensioner at \$8 a month; that soon after she got her pension she was advised by her attorneys that she could get a land warrant; that they also wrote something about the Government not giving land warrants any more, but giving scrip; that witness does not know whether they obtained a land warrant or scrip when they first wrote to her, but that from the way they wrote she thought they had a land warrant or thought that they could get it; that they first wrote to her that she would have to give a power of attorney; that these attorneys, Milo B. Stevens & Co., wrote that they would give her \$200 for the scrip, and witness does not know whether they had received it or not, but thought they must have been sure of getting it or they would not make an offer; that witness thought that what they wrote her to do she would have to do as she had done in getting her pension and that she did as they told her because she did not know better; that they wrote they would send the \$200 to any person or bank that the warrantee might select, and that witness saw Mr. Gillette at Stevenson, Washington and had them send the check to him; that Mr. Stevenson got the check and turned it over to witness and witness deposited it in the First National Bank at Portland, Oregon; that witness got said check and first pension money altogether and deposited it altogether and it amounted to about \$450; that Mr. Gillette wrote the letters and did all her business and knows all about it, and when Milo B. Stevens

& Co. offered witness \$200 for the warrant she took the letter to Mr. Gillette and he read it all over; that witness thought the money would do her more good than the land warrant or scrip as she had nothing at all and needed money; that all she had was her little
445 garden and what potatoes she could sell and she thought that Milo B. Stevens & Co. were perfectly fair and were doing what was fair; that witness does not know whether the offer to purchase the land warrant or scrip was sent to her before or after the warrant was granted, but thought they must have it or knew they could get it; that witness was not given any information as to the probable value of the land warrant; that the offer of Milo B. Stevens & Co. of \$200 was the only value placed on it, and witness was not told by any one that it might be worth more than \$200, or whether it was worth that much; that witness has found five letters from Milo B. Stevens & Co. in regard to this land warrant business and she surrendered them to the special examiner for use as evidence, and that she went to Mr. Gillette about this business with all of her letters, and he did all her work and all her writing for her and that the letters which witness gives to the special examiner will show how her business was done better than witness can remember. (See Special Examiner Libby's report, pages 7 to 10.) In her letter filed June 10, 1907, Mrs. Monaghan states that since May 10, 1907, she has received from Milo B. Stevens & Co. a check for \$470, representing the difference in the amount which said firm paid her shortly after the warrant was issued (\$200) and the amount for which they state they sold the same, and adds "I thank you very much for this interest in an old woman's right."

446 J. T. Gillette, postmaster, Stevenson, Washington, testifies that he is well acquainted with Mrs. Monaghan and wrote out all her papers in regard to getting her pension and in regard to her land warrant; that as witness now remembers the land warrant was never sent to her, but she received notice from her attorneys that it would be granted and was for 160 acres; that her attorneys were Milo B. Stevens & Co., of Washington, D. C.; that the first mention, so far as witness knows, of the buying or selling of the warrant came within the notice that the warrant had been granted and a letter from them offering to purchase the warrant for \$200 cash and their fee as attorneys in getting the warrant and getting the pension; that is, whatever fee was due them, but witness can not remember just what it was, that with the offer to purchase was an order for the warrantee to sign for the warrant to be delivered to them and also a printed assignment for her to sign in case she cared to sell at their figure; that as witness recalls the assignment was not to Milo B. Stevens & Co., but in some other name, which witness supposed represented a clerk or some member of the firm as all the business was done with Milo B. Stevens & Co.; that there was nothing to indicate the probable value of the warrant, and Mrs. Monaghan was not advised as to what
447 the warrant might be worth, but they simply made their offer of \$200 and their fee for the warrant, and sent the necessary papers along for her to sign, in case Mrs. Monaghan accepted their offer, so the warrant would be delivered to them; that Mrs.

Monaghan came to witness and asked witness what she should do, and witness asked her if she did not want the land, or want to give the land to some of her children, and she stated that she did not want the land, but wanted the money and witness told her that if that was the case she might as well sell the warrant and this is what she did, and that in due time the draft for the \$200 came to witness, and witness turned it over to Mrs. Monaghan; that witness does not know what she did with it; that witness did not know what the land warrant might be worth, and witness did not know of any one who was looking for such things or who dealt in them, but since then the witness had thought the warrant might be worth more, but has no knowledge of what the market value is of such warrants; that witness did not know of any lands near Stevenson on which such warrants could be used, and thinks there is no one else in that locality except witness and Mrs. Monaghan who had any knowledge in regard to the sale and transfer of the warrant in question. (See Special Examiner Libby's report, pages 11 to 14.)

Among the letters turned over by Mrs. Monaghan to the special examiner, which will be found with the special examiner's
448 report, is one from Milo B. Stevens & Co., dated May 20, 1904, containing the following paragraph:

"By the way, it is possible that we may be able to secure for you what is called a bounty-land warrant. We do not mean that we can secure for you Government lands, but we can probably secure for you some scrip. If you want us to undertake the case we will do it, but before going to any trouble or expense in the matter we have concluded to make you this offer: We will prepare and present the case for you and make no charge for our services therein, and will pay you two hundred dollars for the assignment of the warrant, provided, of course, that we succeed in securing the warrant for you. If we do not succeed, of course, we make no charge for our services. If the above offer is satisfactory, let us know, and we will start the preparation of the case."

Thus it will appear that they actually entered into or attempted to enter into, an arrangement with their client in the pending claim to secure any warrant which might thereafter issue in her behalf for the sum of \$200, in advance of the filing of the application for the warrant. The other letters referred to in the pensioner's deposition are with reference to this case and in the letter of June 25, 1904, before the warrant was issued, occurs the following paragraphs:

"If we succeed in securing the warrant for you, advise us whether you will be willing to assign the same to us for two hundred dollars (\$200) in cash.

If you conclude to accept this offer, we will prosecute the case for you and waive our fee of \$25, thus making no charge for our services in securing the warrant."

(See Special Examiner Libby's report, pages 16 to 18, inclusive.)

449 James Brizzolara, of Fort Smith, Arkansas, testifies that he is a member of the firm of Brizzolara & Fitzhugh, Attorneys, and attorneys for W. R. Abbott, of Little Rock, Arkansas, and

purchased for him from R. A. Fennell, of 1110 F Street, Northwest, Washington, D. C., bounty land warrant No. 115689, issued to Margaret Monaghan on July 7, 1905, for 160 acres, for the sum of \$4.50 per acre (or \$720 for the warrant), and payment for the same was made by Mr. Abbott, who used the warrant in making a location. (See report of Special Examiner Bowie, page 7.) This case was used in the citation.

Case #29, case of Mary E. Eaton, warrant No. 115693, 160-55, issued August 28, 1905.—Milo B. Stevens & Co. were the attorneys of record in the application of the widow for pension, and filed in connection therewith, on April 17, 1893, an allegation of the claimant that she was born on March 27, 1833, and was disabled by reason of declining health. On June 24, 1893, said firm filed the affidavit of Dr. Edward R. Tripp that their said client was suffering from nervous prostration, insomnia, and catarrh, and that in his judgment she would never entirely regain her usual health.

On June 24, 1893, said firm filed the affidavit of Dr. T. B. Saulsbury that Mrs. Eaton was suffering from nervous prostration, brought on by overwork in nursing her husband, Thomas
450 Eaton.

On October 26, 1904, Eugene E. Stevens and Thomas R. Harney, jointly, filed a declaration for a military bounty land warrant executed by Mrs. Eaton, in which she alleged that she was 70 years of age, and fee agreements executed in conformity with the provisions of the act of July 4, 1884. On September 8, 1905, said warrant was delivered to and receipted for by Milo B. Stevens & Co. (See original papers.) Having received said warrant, Milo B. Stevens & Co. caused to be endorsed thereon a blank form for an assignment to Thomas R. Harney, a member of said firm, and said assignment was executed by the warrantee on September 11, 1905. On September 13, 1905, Thomas R. Harney executed an assignment in blank, and said assignment was subsequently completed by inserting the name of Angus J. Conoly, of Agnes, Florida, therein, and the warrant was used by Mr. Conoly in making a location on November 9, 1905.

Mary E. Eaton, aged 72, of Easton, Maryland, testifies that Milo B. Stevens & Co., of Washington, D. C., secured her pension for her, and about three years ago wrote something about securing an increase, and later wrote to her that she was entitled to a bounty land warrant for 160 acres of land, and that they would secure this for her for a fee of \$25; that witness replied that she would not
451 be willing to pay them \$25 for a land warrant unless she could sell the land warrant, and Stevens & Co. replied that they could sell the land warrant for witness, but made no mention of the price which they would pay for the warrant; that shortly after witness filed her application, she received a letter from Stevens & Co. offering her \$150, less their fee, \$25, or \$125 net for the warrant and inclosed an assignment for the witness to sign, that witness took this assignment and letter of Stevens & Co., to Colonel Henry Hollyday, junior, and he and Mr. F. G. Wrightson advised witness not to sign the agreement for the transfer, and witness did

not sign it; that Stevens & Co. then wrote to John Anderson to get witness to sign the transfer, and Mr. Anderson came to see witness and witness told him Colonel Hollyday was transacting business for her; that Colonel Hollyday told witness that Milo B. Stevens & Co. had written to him, offering him \$10 if he could induce her to sign the assignment; that after this Stevens & Co., wrote that they took all the risk and thought she ought to sign the assignment, transferring the warrant to them; that Stevens & Co. also wrote to witness for evidence which witness could not furnish, and expressed a doubt as to witness's claim being allowed; that they then informed witness that her claim had been rejected because she had not been married to Mr. Eaton before 1855, and stated they would appeal the case;

452 that there was some correspondence between Colonel Hollyday and Stevens & Co., and that Colonel Hollyday wrote to some friend to learn what bounty land warrants were worth, and advised witness that he had — informed that such warrants were worth from \$2.50 to \$4.00 per acre; that thereafter Stevens & Co. wrote to Colonel Hollyday, asking the least that witness would take for the warrant; that Colonel Hollyday came to see witness and said that it was apparent that they could not do anything with "them fellows" down there, and that \$200 was better than nothing, and witness then decided to take the \$200, that after that witness does not know what correspondence was carried on, as it was between Colonel Hollyday and Stevens & Co.; that later Colonel Hollyday sent for witness and witness signed a paper directing the Commissioner of Pensions to deliver the warrant to Stevens & Co.; that a paper came for witness to sign a transfer of the land warrant to some one—just whom witness can not recall; that witness does not know whether she ever saw the land warrant, and can not say whether the assignment was endorsed on the back of the warrant; that Colonel Hollyday explained the contents of each paper and explained each step as they went along; that witness did not pay much attention to the appearance of the paper nor the contents thereof as she knew that Colonel Hollyday was a friend and an honest man and knew more about it

453 than she did; that after witness signed the assignment she does not know anything further that happened, except that

Colonel Hollyday told her that he had gotten the payment from Stevens & Co. through the bank, and that the check came to the Farmers & Merchants' Bank at Easton, Maryland, and Colonel Hollyday sent for witness, and witness went to the bank and the money *was* deposited to witness's credit on September 14, 1905, and the amount was \$200; that witness does not know who drew the check; that witness never had the land warrant in her possession; that all the letters which witness received from Stevens & Co. have been destroyed; that witness does not know whose name appeared in the assignment; that witness never received from Stevens & Co. any communication stating the value of the land warrant, and that witness paid Colonel Hollyday nothing for his services in this matter. (See Special Examiner Fletcher's report, pages 11 to 16.)

Mrs. Easton further testifies that she sold her land warrant to Milo B. Stevens & Co., of Washington, D. C., who got the warrant for her,

for the sum of \$200, because she did not know what warrants were worth; that Stevens & Co. first offered her \$125 for the warrant, and sent her some papers for her to sign, but she did not sign them because Colonel Hollyday advised her not to do so; that they then wrote a letter to Colonel Hollyday, offering him \$10 to get her to sign the papers; that Colonel Hollyday brought the letter to
454 witness and again advised her not to sign the assignment; that on May 13, 1907, witness received a registered letter, No. 129599, from Milo B. Stevnes & Co., containing a check for \$455, drawn by Milo B. Stevnes & Co., on the American Security & Trust Co., of Washington, D. C., May 10, 1907, to the order of Mary E. Eaton; that the envelope contained this check and also contained a statement of her account with Stevens & Co., and a form for a receipt for the money for witness to sign; that witness turns over the envelope, their letter, the statement of account, and the form for a receipt for use as evidence in this matter, and placed her initials on each of the papers; that if witness had not believed from what Stevens & Co. first said about giving her \$125, and then raising the offer to \$200 and that that was all witness could get, witness would not have let them had the warrant for that amount, that witness knew nothing about it and they fooled her; that they said perhaps they could sell the warrant, and that they were taking a risk in offering \$125; that witness wants to thank the Pension Bureau for getting her that \$455 additional. (See Special Examiner Stewart's report, pages 5 and 6.)

Henry Hollyday, junior, of Easton, Maryland, Deputy Clerk of the Circuit Court, testifies that he assisted Mrs. Mary E. Eaton in
455 procuring a bounty land warrant and has known her almost all his life; that Mrs. Eaton came to witness as a friend of witness's grandfathers; that he had interested himself in securing a pension for her, and has been executing her pension vouchers before witness for years; that Milo B. Stevens & Co. notified Mrs. Eaton that she was entitled to a bounty land warrant, and that their fee was \$25, and made her an offer of \$100 or possibly more if the warrant was assigned to them; that up to this point witness had not come into the case; that Mrs. Eaton replied to the letter of Stevens & Co. and agreeing to their propositions, stating that she knew nothing about the business but was willing to appoint them her agent; that they sent her a power of attorney and an assignment of the land warrant to them, and then Mrs. Eaton came to witness to consult with him, bringing the blank assignment and the letter which accompanied the assignment, which, if witness remembers correctly, stated she would get 150 acres of land, and the firm's fee would be \$25, and they would give her \$125 to assign the warrant to them; that witness advised Mrs. Eaton not to assign the warrant, and wrote to Stevens & Co., agreeing to give them \$25 fee, and stating that Mrs. Eaton would communicate with them further with reference to the sale of the warrant after they had secured it for her; that Stevens & Co. then wrote to John C. Anderson to see Mrs. Eaton and secure the assignment of the warrant; that witness did not see this letter to Mr. Anderson, but was informed

by Mrs. Eaton that she had informed Mr. Anderson that
456 witness was attending to all her matters, and that she would
do nothing without consulting witness, that Stevens & Co.
wrote and stated that they had been advised that witness was acting
as Mrs. Eaton's agent, and they wanted witness to get Mrs. Eaton
to make an assignment of the warrant to them; that they were going
to considerable expense and believed that witness would agree with
them that it was only right the assignment should be made to them.
That it is witness's recollection that Stevens & Co. stated that the
land was worth about \$1 per acre, and that they would give \$125
for the warrant, and this letter was returned to them; that witness
replied to Stevens & Co. that he was Mrs. Eaton's friend and could
not see how Mrs. Eaton could be benefitted by selling something she
did not have, and later received a letter from Stevens & Co. offering
witness a fee if witness would get Mrs. Eaton to make an assign-
ment to them, offering witness the sum of \$10 or \$25, witness has
forgotten the amount, and witness replied to Stevens & Co., that what
witness was doing, he was doing as the friend of Mrs. Eaton and
refusing to accept anything from them; that after this a letter came
from Stevens & Co. which witness shows to the special examiner,
dated November 30, 1904, calling for certain evidence, and witness
replied, stating that Stevens & Co. had put off for a long time calling
for the evidence, and filed Mrs. Eaton's affidavit that she could not
furnish the evidence; that the next news that was received was
457 that the claim was rejected; that the next information wit-
ness received was the letter dated April 11, 1905, which wit-
ness hands to the special examiner; that in reply to the
proposition contained in the letter of April 11, 1905, as to the
assignment of the warrant, witness stated that he would consult with
Mrs. Eaton and advise them later; that finally, upon witness's ad-
vice, Mrs. Eaton agreed to accept \$200 net for the land warrant,
exclusive of the fee and costs, and as witness remembers the next
communication of any import was the assignment, dated September
7, 1905, which was signed by Mrs. Eaton and witnessed by Mr.
Wrightson and witness; that witness supposes that this assignment
was prepared in the office of Stevens & Co., as it was all ready for
Mrs. Eaton to execute; that about the same time a letter from
Stevens & Co., dated September 8, 1905, was received by witness and
that the warrant, which Mrs. Eaton had assigned to Thomas R.
Harney, was then taken to the Merchants National Bank of Easton,
Maryland, with a draft on Milo B. Stevens & Co. or Thomas R.
Harney, for \$200 and left with the cashire for collection, and later
the cash came back to the bank, and witness had the amount placed
to Mrs. Eaton's credit, and what witness did was a matter of friend-
ship for Mrs. Eaton and witness refused any compensation from
Stevens & Co., and received no fee or compensation in any form,
and further, that the proposition and most of the correspondence
with reference to the land warrant occurred before the claim
458 was rejected, of that witness is sure. (See Special Examiner
Fletcher's report, pages 17 to 24.)

On April 11, 1905, Milo B. Stevens & Co. wrote a letter to Colonel

Henry Hollyday, junior, with reference to this case, which reads as follows:

"Office of Milo B. Stevens & Company, Solicitors of Claims and Patents, Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

H-W.

WASHINGTON, *April* 11, 1905.

Col. Henry Hollyday, Jr., Easton, Md.

DEAR SIR: We have heretofore had some correspondence with your concerning the bounty-land matter of Mrs. Mary Eaton, and we write to say that we were very much disappointed when her claim was rejected. When the claim was filed, and for some time thereafter it was clearly allowable under the practice that had obtained in the Pension Bureau since the year 1855. The Interior Department, however, on December 19, 1904, rendered a decision to the effect that in order for the widow to be entitled to a bounty-land warrant under the act of March 3, 1855, she must have been the widow of the soldier or sailor on March 3, 1855. Under that decision the Pension Bureau took up the case of Mrs. Eaton and rejected it. We have, however, filed an appeal in the matter and it will probably be some time yet before a decision is rendered.

Inasmuch as you have shown so much interest in the case of Mrs. Eaton, we have concluded to send you by this day's mail a printed copy of our brief filed in the bounty-land case of the widow of Henry F. Thornton. The same question was involved in that case as is involved in the case of Mrs. Eaton.

In the Thornton case, like in the Eaton case, our fee, if we are successful will be \$25, and that will not pay the cost of the printed brief in the Thornton case.

We intended to follow up the appeals in both cases even though we lose money by doing it. Mrs. Thornton has agreed that if we are successful she will sell the warrant to us for a very nominal consideration. We have not asked Mrs. Eaton to do this, but it
459 has occurred to us that perhaps you may not be unwilling to submit the matter to her and have her state the lowest cash price, she will accept for the warrant if we finally succeed in getting it for her. You will no doubt recognize the reasonableness of this proposition. We did think of writing to her direct on the subject, but inasmuch as you have been attending to the matter for her at that end of the line, we deemed it but courteous to take up the matter through you.

Very respectfully,

(Signed)

MILO B. STEVENS & CO."

(See Special Examiner Fletcher's report, page 26.)

On September 8, 1905, Milo B. Stevens & Co. wrote a letter to Colonel Henry Hollyday, junior, with reference to this case, which reads as follows:

"Office of Milo B. Stevens & Co., Solicitors of Claims and Patents,
Washington, Chicago, Cleveland, Detroit.

Milo B. Stevens (Estate), Eugene E. Stevens, Thomas R. Harney.

H-W.

WASHINGTON, *September 8, 1905.*

Col. Henry Hollyday, Jr., Easton, Md.

DEAR SIR: We have secured the bounty-land warrant and we are sending it herewith for the assignment to be executed by Mrs. Eaton. All that she need do is to sign it where we have made the cross-mark and have two witnesses sign to the left of her signature. Then date the assignment and have it acknowledged before any officer who has a seal. The warrant may then be sent to the Riggs National Bank, Washington, D. C. with a letter instructing the bank to deliver it to Milo B. Stevens & Co. upon the payment of two hundred dollars for Mrs. Eaton. We will pay the bank charges.

We thank you for your expressions of confidence and shall be glad to attend to any business in our line that you may be able to refer to us.

We are very glad that we were successful in having this warrant allowed, because we know that Mrs. Eaton was very much disappointed when the claim was rejected. It ought never to have been rejected, but we had a hard fight to secure the reversal of the adverse action.

Very respectfully,
(Signed)

MILO B. STEVENS & CO."

460 (See Special Examiner Fletcher's report, page 27.)

Frank G. Wrightson, Clerk of the Circuit Court, Easton, Maryland, corroborates the testimony of Colonel Henry Hollyday, junior, with reference to the prosecution of Mrs. Eaton's case. (See Special Examiner Fletcher's report, pages 28 to 30.)

Exhibit A, page 7, of the report of Special Examiner Stewart, is registered letter No. 129599, Washington, D. C., May 11, 1907, in an envelope of Milo B. Stevens & Co., and addressed to Mrs. Mary E. Eaton, Easton, Maryland. Back stamped, Easton, Maryland, May 13, 1907.

Exhibit B, pages 8 and 9, of said report is a letter from Milo B. Stevens & Co., addressed to Mrs. Mary E. Eaton, dated at Washington, D. C. May 10, 1907, which reads as follows:

"WASHINGTON, D. C., *May 10, 1907.*

Mrs. Mary E. Eaton, Easton, Md.

DEAR MADAM: Sometime since, we bought from you a bounty land warrant of 160 acres for which we paid you \$200.00, the price mutually agreed upon, and in so doing, we believed that we were acting within our rights, notwithstanding that, following a practice of long standing, we ourselves rendered the necessary services in securing the issue of the warrant.

The Bureau of Pensions has recently expressed its disapproval of

attorneys dealing in land warrants of their own procurement for their clients, and, waiving all questions of the justice of the position of the Bureau in the premises, we are unwilling to rest under that judgment. We have accordingly decided, voluntarily, to remit to you the difference between the price at which we disposed of the warrant and that we paid you for it, less our fee for securing it.

461 We do not feel it necessary to discuss the propriety or impropriety of the practice in question, but will say that it existed for some years without objection, or, so far as we know, even official comment. In view of the risks assumed by those dealing in land warrants during the period covering our transaction with you, and the necessity of guaranteeing to the person to whom we sold it the validity of each warrant in respect to any possible flaw in the title thereto, or of any possible error in the issuance of the warrant, or of any possible refusal of its acceptance by the General Land Office, and, in view of the further fact that the value of land warrants depending, as it did, upon a departmental decision of February, 1902, subject to review and reversal, dealing in such warrants was clearly so speculative as to make it hazardous, and to justify the effort to obtain the same from warrantees on the best terms acceptable to them. In verification of this, we need only call your attention to the fact that, since our transaction with you, a departmental decision of January, 1907, has wholly taken away from such warrants a possible value which they formerly had, depending upon the prior departmental decision, and that, under existing conditions, your warrant, if now in your possession, would be of far less value to you than even the amount which you received for it.

As early as November last, for the reason first stated, namely, the discontinuance by the Bureau of Pensions of the practice mentioned, we abandoned this field, and have since had no dealings, actual or attempted, in warrants. In consummation of our purpose to give each of our clients the benefit of our prior dealings in that behalf, we are sending a similar communication to each, and we submit herewith a statement of the account between you and us, as it appears from our records and recollection, and, in accordance therewith, enclose our certified check, for which please sign and return the accompanying receipt. Should your understanding of the account be different from ours, we shall be pleased to hear from you at your early convenience, and if possible, by return mail.

Very respectfully,
(Signed)

MILO B. STEVENS & CO."

Exhibit D, page 11, of said report is a form for a receipt for \$455, which reads as follows:

462

"Receipt.

\$455.00.

MAY —, 1907.

Received of Milo B. Stevens & Co. of Washington, D. C., a certified check, dated May 10, 1907, for \$455/00, drawn on the American Security and Trust Co. Bank of Washington, D. C., in my favor,

together with the sum of \$200.00, heretofore paid me by them, represents \$680.00, that I have received from them for the bounty land warrant for 160 *acres* that was issued to me in August, 1905, and which I sold to them for a cash consideration in September, 1905, at a price therefor *them* mutually agreed upon; and which \$680.00 they represent is the full gross amount that they have received from their sale of the warrant, less their fee of \$25 for having secured the issuance of the warrant for me.

(Sign here.)

Two witnesses:

_____,

Angus J. Conoly, postmaster, Agnes, Florida, testifies that he has purchased a number of bounty land warrants from Malloy Brothers, who have a contract with the Moses Land Scrip and Realty Company; from G. R. Battel, and from W. T. Hendry; that the only record which he has made of the transaction was to endorse the number of the warrant and the name to whom the warrant was issued on the envelope and file the envelope; that his files are at Quitman, Georgia, but he has not got all of them, and can not say whether this particular case is there referred to or not; that his files would not show the amount paid, nor the dates, but simply the number and
463 name of the case, and witness could not testify from his paid checks as to any particular case, that witness has never paid less than \$3.60 for any warrant, and never paid over \$6.50 and commissions for any warrant, and at the time that witness used warrant No. 115693, the price was \$4.25 per acre, but witness can not testify whether he paid that amount for the Eaton warrant and can not tell from whom he got that warrant, or when. This case was used in the citation.

Case #30, Lettia J. Hickman, child of Natha Frakes, warrant No. 115698-160-55, issued August 28, 1905.—On May 13, 1904, Eugene E. Stevens and Thomas R. Harney, jointly, filed the declaration for a bounty land warrant executed by Letitia J. Hickman, aged 65 years, and fee agreements executed in conformity with the provisions of the act of July 4, 1884. On December 14, 1904, they filed the affidavit of their client in which she testified, *inter alia*, that she was born on June 28, 1838, and thereafter they filed additional testimony with reference to the age of their said client and the merits of the case, and the claim was allowed and the warrant was issued on August 28, 1905, and was surrendered to and receipted for by them on September 11, 1905. (See original papers.) Having thus procured the warrant of their said client, the accused caused to be
464 endorsed thereon a form for an assignment of said warrant to Thomas R. Harney, a member of said firm, and the assignment to Mr. Harney was executed by the warrantee on September 14, 1905, and on September 19, 1905, Thomas R. Harney executed, in blank, an assignment of said warrant, and the warrant was transmitted to Perry, Taylor county, Florida, where it was pur-

chased in behalf of J. F. King, of Perry, Florida, and his name and address inserted in the assignment made by Mr. Harney and the warrant was use- by Mr. King in making a location on November 9, 1905. (See original warrant, assignment, and certificate of location in the Land Office papers.)

Letitia J. Hickman, of 315 North 9th street, St. Joseph, Missouri, testifies that she sold the above mentioned warrant to Milo B. Stevens & Co., of Washington, D. C., for the sum of \$75, and did not pay them anything out of this amount as a fee for securing the issue of the warrant in her behalf, but that she paid Robert H. Wade, of St. Joseph, Missouri, the sum of \$5 for what he did in the case, so that she received but \$70 net for her warrant; that as soon as Milo B. Stevens & Co. became the attorneys in this case, they made her an offer in money for the land warrant if it should thereafter be allowed; that she entered into no written agreement, or contract with Milo B. Stevens & Co. as to what she would take for the warrant if it

465 was allowed, but that said firm made her offers and wrote her several letters asking what she would take for the warrant if it was allowed; that witness hands to the special examiner a letter from Milo B. Stevens & Co., dated May 13, 1904, in which they ask her whether, in event of the allowance of the warrant, witness would be willing to sell it to them for \$200; that witness hands to the special examiner a letter from said firm, dated September 15, 1904, in which they ask her if she would accept their offer of \$200 for the assignment of the warrant; that in reply to this letter, witness wrote to Milo B. Stevens & Co. that she would not agree to take any definite price for the warrant until she knew it would be allowed, and she furnished them with the names of persons who could act as witnesses in her behalf; that witness also hands to the special examiner the letter from Milo B. Stevens & Co., dated October 4, 1904, in which they increase their offer for the warrant, if allowed; that Milo B. Stevens & Co. transacted all their business with witness through Robert H. Wade, the person mentioned in that letter; that Mr. Wade advised witness that Milo B. Stevens & Co. had written to him with reference to the progress of the claim, and what they were willing to pay for the warrant if the Pension Bureau should grant it; that witness never got Mr. Wade to do any work for her in this case until after she got the letter dated October 4, 1904, and then did not

466 go to see Mr. Wade until he came to see her about the matter, as up to that time, witnesses' daughter, Mattie Bowen, had done the writing for witness to Milo B. Stevens, and from thence on Mr. Robert H. Wade did all the writing which passed between Stevens & Co. and witness until the transaction was closed by witness assigning the warrant over to Milo B. Stevens & Co., and Mr. Wade giving her the \$75 mentioned; that Mr. Wade received the money himself and turned the money over to witness; that witness then asked Mr. Wade how much she owed him for his services in the matter and he replied that he would only charge her \$5, which she paid him then and there, so that she only had \$70 net from the warrant; then when witness had her first talk with Mr. Wade relative to this matter, she told him she would pay him what was right for

his services in aiding her; that witness never had the land warrant in her possession, or in her hands at any time, except that Mr. Wade laid the warrant before her for her to write her name to the assignment, which witness did, thus transferring the warrant to Milo B. Stevens & Co.; that, in fact, Mr. Wade kept witness in the dark as to the likelihood of the warrant being granted until after witness had agreed, after his persuasion, to accept \$75 for it; that in his persuasions he said that Milo B. Stevens & Co., would not pay \$300 for the warrant which they had offered; that witness had better
467 agree to take less, and witness hesitated to the last, and until she concluded that Stevens & Co. would never get the warrant for her unless she agreed to take what they would give her for it, and finally did so, and then it was a few days until witness was informed by Mr. Wade that the warrant had been granted to her, and later, Mr. Wade presented the warrant for witness's signature, and witness signed it over, as she understood at the time, and that it was at the house of witness's daughter Mattie Bowen, that Mr. Wade brought the warrant and laid it before witness to sign, and witness signed it; that witness had consented to accept the \$75 for the warrant in the conversation with Mr. Wade, and then he said that he would write to Milo B. Stevens & Co. that witness had so consented, this before witness received a notice from the Pension Bureau, or any information from Mr. Wade, that the warrant had been issued to her, and that from the statements and acts of Mr. Wade, witness did not believe that they would ever have let witness know the warrant was issued if witness had not consented to sell it to them first, but witness never made a written agreement to sell it to Milo B. Stevens & Co. at any time before she signed the assignment on the warrant. (See Special Examiner Tedrow's report, pages 7 to 13.)

Richard G. Hickman, 315 North 9th street, St. Joseph, Missouri, son of Letitia J. Hickman, testifies with reference to the circumstances of the filing of the application of his mother that
468 there was no written contract or agreement with reference to the disposition of the warrant, but at the very first Milo B. Stevens & Co., in their letter to the warrantee, told her that they would give her \$200 for the warrant if it was issued; that they later urged her to sell to them for their offer of \$200, and later raised the offer to \$300, but she did not yet consent to their proposition; that they then referred her to their agent, Robert H. Wade, and he did all the writing between the warrantee and Milo B. Stevens & Co., after that, claiming to be the representative of Milo B. Stevens & Co.; that Mr. Wade came to the warrantee to interview her with reference to the warrant, and from the very first seemed to urge her to consent to sell the warrant to Milo B. Stevens & Co. in event of its issue, even contending that the firm would not pay the amount of their offer for it; that it was very doubtful if the warrant would ever be allowed, and urged her to at last offer what she would accept for it, stating that he was willing to help her get such evidence as was required to prove the claim; that witness's mother told Mr. Wade she would pay him what was right for his services in the matter, but contended that she wanted the warrant before she would

consent to set a price on it, but continued to refuse Stevens & Co.'s offer, until she thought she would never get the warrant unless she would accept what Milo B. Stevens & Co. offered for it and finally, and before witness' mother knew the warrant was issued, consented to accept \$75, and then it was not long before she was notified by Mr. Wade that the warrant was allowed, and shortly thereafter signed the warrant over to Milo B. Stevens & Co., and Mr. Wade paid her \$75 for the warrant; that witness was not present when his mother signed the assignment or when Mr. Wade paid her the money and she paid Mr. Wade \$5 for his services, but he was present and heard many of the conversations between his mother and Mr. Wade about this matter, and that his mother never had possession of the land warrant. (See Special Examiner Tedrow's report, pages 14 to 17.)

Mattie S. Bowen, of 1117 North 4th street, St. Joseph, Mo., daughter of the warrantee, fully corroborates the testimony of her mother with reference to the history of the prosecution of the application for a land warrant, and the subsequent assignment of said warrant. (See Special Examiner Tedrow's report, pages 18 to 21.)

Della Hickman, of No. 1104 North 2d street, St. Joseph, Missouri, granddaughter of the warrantee, testifies that she was present at the residence of Mattie Bowen, in St. Joseph, Missouri, when Robert H. Wade brought some papers for witness' grandmother to sign, and she signed them in witness' presence, and witness wrote her name as a witness to said signature; that witness does not remember the nature of these papers; that witness was also with the warrantee when she got the money which witness understands was for the land warrant; that witness went with the warrantee to Mr. Wade's office to inquire whether the money had come for the land warrant and Mr. Wade had the check for it, which was made to Letitia J. Hickman, the warrantee, and he went with her, and witness, and Mrs. Mary A. Hickman, and Florence Hickman to a bank in St. Joseph, where Mr. Wade had the check cashed and the money was paid on it, and he handed the money to warrantee in witness's presence, and witness counted the money for the warrantee, and knows that it was \$75, and that the warrantee handed to Mr. Wade the sum of \$5, which witness understood was in payment for his services in the case. (See Special Examiner Tedrow's report, pages 22 and 23.)

Mary A. Hickman, of 1302 South 17th street, St. Joseph, Missouri, daughter-in-law of the warrantee, testifies that she was at Mrs. Bowen's house, in St. Joseph, Mo., when a man, whose name witness does not remember, came and told Letitia J. Hickman to come to his office that morning, and the money would be ready to pay her for the land warrant, which it seemed had been allowed to her by the Government, and which she had sold to him or to some one through him, as witness understood from what was stated about the matter; that witness went with Mrs. Hickman to this man's office—witness thinks the man's name was Wade—that the man went to Mrs. Hickman, Della Hickman, and witness's daughter, Florence Hickman, and witness to a bank in St. Joseph,

where Mrs. Hickman and Mr. Wade stepped to the cashier's window and she got the money and then stepped back with the money in her hands, which, as well as witness can remember, was \$70 after she gave Mr. Wade his pay for what he had done for her in the matter, and that witness never saw the land warrant, and does not know whether it was ever in the possession of the warrantee. (See Special Examiner Tedrow's report, pages 24 and 25.)

Robert H. Wade, notary public, No. 7 Rock Island Building, St. Joseph, Missouri, testifies that the first that he knew about the land warrant claim of Letitia J. Hickman was when he received a letter from Milo B. Stevens & Co., of Washington, D. C., in November. No, witness is wrong, he has found the letter and it was dated October 4, 1904, which letter shows how witness came into the case; that witness went up to Mrs. Hickman's house and interviewed her about the matter, telling her that he had been instructed to call upon her by her attorneys, Milo B. Stevens & Co., of Washington, D. C., and asking her what testimony she could produce; that from

her answers, witness wrote to Milo B. Stevens & Co.; that on
472 October 22, 1904, Milo B. Stevens & Co. wrote a letter to witness in which they mention having written to Lexington, Kentucky, for some information with reference to this case; that witness does not remember that he answered said letter; that witness next received a letter dated November 9, 1904, apologizing for delay in answering his former letter; that the firm's next letter is dated November 29, 1904, giving witness instructions as to what was to be done in securing evidence in the case, and as to what should be asked claimant about what she would take for the warrant if it should finally be allowed, as it seemed there had been some former correspondence between Stevens & Co. and claimant, tending to show that they had made an offer for the land warrant, if allowed; that in accordance with the last mentioned letter, witness saw claimant about December 16, 1904, and talked with her about what she would take for the warrant, if granted, and when witness told her that Stevens & Co. would give her \$200 for it, she said that they had offer- her \$300, and witness then told her that Stevens & Co. had written to him that because of the difficulty that they had in proving up the case that they could give her but \$200 for the warrant, and she finally agreed to take the \$200 in event of its allowance;

that there was no written agreement at the time with refer-
473 ence to the assignment of the warrant; that witness wrote the result of this interview to Milo B. Stevens & Co. soon after it occurred; that witness has a letter from Milo B. Stevens & Co., dated December 13, 1904, in reply to his report last above mentioned, instructing witness to again confer with claimant as to what she would agree to take for the warrant, and it was after that that witness got her to agree to take the \$200 instead of at the former interview mentioned in witness's testimony; that witness received a letter from the firm dated December 23, 1904, requesting a further interview and compromise with the claimant as to what she would take for the warrant, if issued; that in a letter dated January 21, 1905, Stevens & Co. stated that they noted with pleasure that witness

had succeeded in securing an agreement from the claimant to accept \$250 for the warrant, but that later she agreed to take \$200, as witness has heretofore stated; that witness has a letter from Stevens & Co. dated March 24, 1905, in which they express surprise at the rejection of the claim, and explained the decision of the Department, saying that they intended to push the case by an appeal to the Secretary and again asked witness to confer with the claimant and tell her the trouble they were having with the case, and try, in view of that trouble, to induce her to consent to reduce

the price of the warrant to a considerable extent; that in the
474 letter dated April 5, 1905, Stevens & Co. advised witness

that the appeal to the Secretary in the case had been overruled, but that they did not intend to abandon the case, and again requested witness to confer with the claimant and try to get her to sell the warrant, if finally obtained, for a much more nominal sum than any that had yet been mentioned, and witness did confer with claimant and wrote Stevens & Co. the result, which was, if the case was granted to her she would accept \$75 in full, which did not require her to pay the attorney's fee. That in a letter dated April 8, 1905, Stevens & Co. advised witness that they did not understand witness's letter, in which he stated that Mrs. Hickman had consented to take \$75 cash for the warrant as they thought that witness would know that no sane person would pay for the prospect of a warrant before it was allowed, and witness responded by saying that Mrs. Hickman was willing to take \$75 net for the warrant when it was allowed; that is, they were to give her \$75, and make no charges for attorney's fees; that in the letter dated April 14, 1905, Stevens & Co. accepted the offer of \$75, the money to be paid when the warrant was properly assigned to them, stating that they had appealed the case and hoped to succeed, and in this letter they enclosed an agreement for the claimant to sign, accepting \$75 for the warrant, and on April 18, 1905, Mrs. Hickman signed this agreement and

witness returned it to Milo B. Stevens & Co.; that in their
475 letter of September 5, 1905, Stevens & Co. notified witness

that the warrant had been allowed and inclosed an order on the Commissioner of Pensions for Mrs. Hickman to date and sign and return to them, stating that they would present the order and secure the warrant and prepare the proper assignment on the back of the warrant to be executed by Mrs. Hickman, and the warrant would then be sent to witness for Mrs. Hickman to execute the assignment, and witness was then to send it to the Riggs National Bank with instructions to deliver it to Milo B. Stevens & Co. upon the payment of \$75 for Mrs. Hickman, and at the same time would make prompt remittance to witness, and asked witness to indicate the compensation which he would expect for his services; that on September 19, 1905, Stevens & Co. acknowledged the receipt of the land warrant of Mrs. Hickman and inclosed a certified check for \$75, payable to Mrs. Hickman in full for the warrant, and inclosed a check for \$25, payable to witness's order as a fee for his services in connection with the matter, and that this closed the case so far as witness had anything to do with it, except that warrantee cashed

the check in witness's presence, and that the land warrant was assigned to Thomas R. Harney, as shown by witness's record in the case; that, as a matter of fact, Letitia J. Hickman never had the land warrant in her actual possession, except that she had the warrant in her hands, or possession, when she was signing her name to it; that Mrs. Hickman paid witness \$5 for his notary work, street car fare, writing and postage in this matter, and that witness turns the letters above mentioned, received from Stevens & Co., over to the special examiner. (See Special Examiner Tedrow's report, pages 26 to 35.)

The letters surrendered by the warrantee and by Mr. Wade constitute exhibit D, pages 37 to 60, of the report of Special Examiner Tedrow, and show the full history of this case.

On September 15, 1904, in a letter addressed to Mrs. Hickman, the firm asks whether she will accept their offer of \$200 for an assignment of the warrant in event of its allowance. (See page 40.)

In the letter dated October 4, 1904, and addressed to Mrs. Hickman, Stevens & Co. suggest that they have an agent by the name of Robert H. Wade, at Room 7, Rock Island Building, St. Joseph, Missouri, and they have written to him about this matter and asking him to confer with her concerning it, adding that if they succeeded in securing the warrant they are willing to pay Mrs. Hickman \$300 for it, less their fee of \$25; that this is a pretty high price for the warrant, but that they would be willing to pay it if their client and her daughter would go to see Mr. Wade and have him assist in trying to get together the proof necessary to establish title. (See page 41.)

On October 4, 1904, Stevens & Co. notified Robert H. Wade that their fee in this case, if they succeeded in getting it, would be \$25; that if they succeeded they had agreed to pay \$300 for the warrant, less \$25 fee; that the applicant is Letitia J. Hickman, who lived at 3214 St. Joseph Avenue; that the firm would like to have Mr. Wade represent them in the case, and would be willing to pay him reasonable charges, and have written to Mrs. Hickman to call upon Mr. Wade, and if she does not call upon him, the firm desires Mr. Wade to call upon her. (See page 42.)

In the letter addressed to Mr. Wade and dated November 29, 1904, Stevens & Co. state, among other things:

"You see what sort of a case we are engaged in and as the law makes our fee of \$25 dependent upon success, we are not willing to advance any money for expenses at that end of the line. If Mrs. Hickman is willing, however, to reimburse you, and you are willing to represent us for a part of our fee and make the same dependent upon success, it is believed that we may be able to establish the case.

Mrs. Hickman has demanded that we pay her \$300 for the warrant if we succeed in securing it. That was an unreasonable demand, especially in the light of the obstacles to be overcome in the prosecution of the case. She ought to be willing to accept \$200 and we wish that you would submit the matter to her again. If she is willing to do that, we are willing to treat you liberally in the mat-

ter of compensation in the event of success in both cases." (See page 46.)

In the letter dated December 13, 1904, and addressed to Mr. Wade, Milo B. Stevens & Co. state, among other things:

"We wish that you would take up with Mrs. Hickman again the matter of the price she is to receive for the land warrant in the event of our being able to secure it for her. See the last paragraph of our letter of November 29. We think she is inclined to be unreasonable in her demands, especially in view of the great amount of work involved. See if you cannot make a better arrangement with her."

(See page 47.)

478 In the letter dated December 23, 1904, and addressed to Mr. Wade, Stevens & Co. state, among other things:

"We note with interest what you say about the price of the warrant. We appreciate your situation in the matter and we think we can safely leave it in your hands. When we first canvassed the case we had no idea that we were going to encounter so many obstacles, or else we never would have undertaken it, and we certainly never would have made any such offer to Mrs. Hickman for the warrant. You can no doubt impress these matters upon her and bring about a compromise on the question of price to be paid for the warrant."

(See page 48.)

In their letter of January 21, 1905, addressed to Mr. Wade, Stevens & Co. state, among other things:

"We note with pleasure that Mrs. Hickman has consented to accept \$250 instead of \$300 for the bounty land warrant in the event of our securing it for her. We have no doubt that you have made the best bargain possible with her, and yet we think that she ought to have consented to take \$200. We are well pleased with the manner in which you have represented us in this case and just as soon as the assignment of the warrant is made to us, we will take pleasure in making settlement with you for your services."

(See page 49.)

In their letter of March 24, 1905, and addressed to Mr. Wade, Stevens & Co. state expressed surprise and disappointment at the action of the Pension Bureau in rejecting the claim, and added that they wished that Mr. Wade would acquaint Mrs. Hickman with the situation so that she could appreciate the difficulties encountered and that they believed, under the circumstances, she ought to sell

the warrant to the firm for a much less price than she has
479 heretofore named. (See pages 50 and 51.)

In their letter of April 3, 1905, addressed to Mr. Wade, Stevens & Co. state, among other things: That in view of all the risks that they are taking, Mrs. Hickman ought to be willing to sell the warrant, if they are ever successful in securing it for her, at a very nominal price, and add that no attorney can charge a greater fee than \$25 in a bounty land case, no matter how much work involved nor how much expense he has in the matter of appeals, motions for reconsideration, etc. (See page 52.)

In the letter dated April 8, 1905, advising Mr. Wade that they could not say that they quite understand what Mr. Wade meant in stating "she offers to take \$75 cash. If you do not think this low enough, let me know and send your offer," adding that they presumed that Mr. Wade understood that no one would think of paying \$75, or any other amount, for the prospect of securing the warrant, and requesting definite information as to Mrs. Hickman's proposition. (See page 53.)

In the letter dated April 14, 1905, and addressed to Mr. Wade, Stevens & Co. acknowledge the receipt of Mr. Wade's letter of April 10, 1905, with reference to Mrs. Hickman's willingness to accept \$75 for the warrant, payable when properly assigned to the firm, the \$75 to be paid free of all charges; or, in other words, they are not to charge her anything for their services in the matter and requesting Mr. Wade to have Mrs. Hickman sign and date the
480 inclosed agreement and then return it to the firm. (See page 54.)

In the letter dated September 5, 1905, and addressed to Mr. Wade, Stevens & Co. stated that they were transmitting therewith an order on the Commissioner of Pensions for Mrs. Hickman to date and sign, to be presented by the firm to secure the warrant; that they would then prepare a proper assignment on the back of the warrant to be executed by Mrs. Hickman; that the warrant would then be sent to Mr. Wade for Mrs. Hickman to execute the assignment, and it could then be sent to the Riggs National Bank, Washington, D. C., with instructions to the bank to deliver the warrant to the firm on the payment of \$75 for Mrs. Hickman, and at the same time the firm would make prompt remittance to Mr. Wade, requesting Mr. Wade to indicate what compensation would satisfy him. (See page 57.)

With their letter dated September 11, 1905, addressed to Mr. Wade, Milo B. Stevens & Co., forward the warrant with the form for an assignment thereon, instructing Mr. Wade to have the same executed and sent, either to the Riggs National Bank, or to the firm, and again asking Mr. Wade to indicate the amount to which he thinks he is entitled for his services in the matter. (See page 58.)

With their letter of September 19, 1905, addressed to Mr. Wade, Milo B. Stevens & Co. inclosed a certified check for \$75 to the order of Mrs. Hickman in full for the warrant, requesting Mr.
481 Wade to deliver said check, and a check for \$25 to the order of Mr. Wade in payment for his services in the matter.

In this case it will be observed that the testimony shows that Milo B. Stevens & Co. secured the written assignment of the warrant before it was issued, and also that they paid to their agent, Mr. Wade, the sum of \$25 for his services in the prosecution of the claim, when, under the law, that was the full amount to which they were entitled in connection therewith.

James F. King, of Perry, Taylor County, Florida, testifies that he has located perhaps 5 or 6 bounty land warrants, and remembers locating a warrant for 160 acres, in township 6; that he does not remember the name of the warrantee, or the number of the warrant

and has no record of any kind; that he did not purchase the warrant, but located it for Malloy Brothers, of Perry, Florida, but does not remember how much they paid for the warrant, or when payment was made; that upon examination he finds that he has a certificate of location given by W. G. Robinson, Register of the Land Office, at Gainesville, Florida, dated November 9, 1905, showing that military bounty land warrant, No. 115698, in the name of Letitia J. Hickman was located in township, etc., by witness; that the location was made for Malloy Brothers, and that witness did not pay Malloy Brothers anything for the warrant, but was paid by them for his services in the matter. (See Special Examiner Davis's report, pages 3 and 4.)

482 In letter filed June 6, 1907, the warrantee, Letitia J. Hickman, states that since May 10, 1907, she has received from Milo B. Stevens & Co., a check for \$580, representing the difference in the amount paid her by said firm for her warrant shortly after its issue, and the amount for which the warrant was sold by said firm, thus indicating that the warrant was sold by Milo B. Stevens & Co. for \$665. (See original letter herewith.) But in this, as in other cases, there is nothing to indicate whether the amount refunded is inclusive or exclusive of the amount paid to their sub-agent or local correspondent.

Duncan G. Malloy, of Perry, Florida, in his deposition of November 27, 1906, in the case of John Clary, warrant No. 115661 (mentioned as case #25 in this letter), testifies that and why he can not give definite information with reference to the cost of individual warrants purchased by him, as he has purchased from 30 to 35 of such warrants; that he has paid from \$3.80 to \$4.50 per acre for such warrants—\$3.80 the lowest price, and \$4.50 the highest price which he has paid for 160-acre warrants. (See report of Special Examiner Davis in the case of John Clary, 25.)

Case #31, Sallie B. Reddick, warrant No. 115700-160-55, issued August 28, 1905.—On January 10, 1905, Eugene E. Stevens and Thomas R. Harney, jointly, filed the declaration of Sallie B. Reddick, claiming a bounty land warrant, and fee agreements executed by her in favor of said firm under the provisions of the act
483 of July 4, 1884. They prosecuted the claim to a successful issue, and on September 11, 1905, the warrant was delivered to and receipted for by said firm. (See original papers in the brief.) Having so received said warrant, said firm caused to be endorsed thereon a form for an assignment of the warrant to Thomas R. Harney, a member of said firm, and forwarded the warrant to Mississippi. On September 16, 1905, the warrantee executed the assignment to said Thomas R. Harney; on September 19, 1905, Thomas R. Harney executed an assignment in blank on said warrant and the warrant was thereafter sold to W. R. Abbott, of Fort Smith, Arkansas, whose name and address was inserted in the assignment, and Mr. Abbott used the warrant in making a location on January 4, 1906. (See original warrant, assignment and certificate of location with the bounty land papers.)

Sallie B. Reddick, aged 63, 3033 Clinton street, Los Angeles, Cali-

fornia, testifies that she was the beneficiary under warrant No. 115700; that she applied for a warrant by reason of the fact that she received from Milo B. Stevens & Co. information that she was entitled to such warrant, and perhaps to an increase of pension; that after that Mr. J. Irving McKenna, of Los Angeles, California, wrote to her stating that he acted as agent for Milo B. Stevens & Co., and attended to their business at Los Angeles, and that thereupon witness

484 went to see Mr. McKenna to talk about the matter and see how it was that he was acting as agent for Milo B. Stevens & Co., and that as witness now remembers, she wrote to Milo B. Stevens & Co. to learn whether it was true that Mr. McKenna was representing them in Los Angeles, and they informed her that it was true and she went to see Mr. McKenna again and made out her application; that when witness first went to see Mr. McKenna, he told her the terms upon which Milo B. Stevens & Co. would prosecute the claim, which was \$25 in cash, or they would allow her \$200 upon the allowance of the warrant and witness would not have to pay her attorneys a fee; that this proposition was made by Mr. McKenna in behalf of Milo B. Stevens & Co., the first time that witness consulted Mr. McKenna; that no other person was present when this statement was made; that this proposition with reference to the disposition of the warrant, if issued, did not originate with witness, and witness would never have thought of it; that witness had received a letter from Milo B. Stevens & Co., and it may be that the proposition was contained in this letter, but witness knows that the same proposition was made to her by Mr. McKenna in behalf of Stevens & Co., and it is witness's firm conviction that she agreed to let Milo B. Stevens & Co. have the warrant for \$200 and that she made such an agreement at the time she executed her declaration before Mr. McKenna, but she has no recollection of having made an agreement

485 to pay Stevens & Co. \$25 and, as a matter of fact she never paid them a cent; that later, while in Mississippi, witness was notified by Milo B. Stevens & Co. that her claim for bounty land had been allowed; that she had previously received several communications from the firm, but does not remember exactly what they were about and does not remember whether they made any more propositions as to the purchase of the warrant, but what they actually did was to carry out the proposition made to witness by Mr. McKenna; that Milo B. Stevens & Co. wrote to witness to sign an order on the Commissioner of Pensions to deliver the warrant to them, which witness did, and they wrote to witness that they had sent the warrant to Mr. John C. Woodward, a notary public, at Mt. Olive, Mississippi, for her to execute the assignment and return the warrant to them; that Mr. Woodward is witness's nephew, but it was not at her suggestion that the warrant was sent to him; that witness was stopping at Mr. Woodward's house at that time, and that it was a mere coincidence that the warrant was sent to him; that witness executed the assignment before Mr. Woodward and he sent the warrant to the Riggs National Bank, at Washington, D. C., as directed by Stevens & Co. in their letter of September 11, 1905; that said bank sent witness a check for \$200 and witness endorsed the check and

Mr. Woodward cashed it for her, and informed her that the bank had paid him his charges; that witness turns over to the special examiner letters from Milo B. Stevens & Co. dated September 5, 1905; September 11, 1905, and September 19, 1905, relating to this matter; that there was certainly a contract, either written or implied, that witness was to let Milo B. Stevens & Co. have the land warrant for \$200 in case of its allowance, and witness is strongly under the impression that she gave a written agreement to do so; and is certain that there was a positive understanding with Milo B. Stevens & Co. before the warrant was allowed that they were to have it for \$200, and is positive that the proposition did not originate with her, as it would never have occurred to her to sell the warrant, and she would have preferred the land for one of her children; that when witness applied for the warrant she did not have \$25 to spare, but when the warrant was granted she had it and would have preferred to have paid them the \$25, but did not, as she was under the conviction that she had agreed to let Stevens & Co. have the warrant for \$200, and that it was her understanding from Mr. McKenna's statement that she was to deposit the \$25, if she accepted the \$25 fee proposition; that the warrant was sent by registered mail to Mr. John C. Woodward by Milo B. Stevens & Co., as shown by their letter of September 11, 1905, and that witness actually had the warrant in her hands and read, and it seems to her it was in her possession over night, or possibly 48 hours, and that so far as witness has been able to find she has no paper showing her agreement with Stevens & Co. with reference to this matter. (See report of Special Examiner Tuckerman, pages 7 to 14.)

J. Irving McKenna, of 316 Lancashire Building, Los Angeles, California, testifies that his record as a notary for January 3, 1905, shows that on that date Sallie B. Reddick executed an affidavit and application for bounty land; that it is witness's recollection that he had written her a postal card to come to his office and that she came there and signed her application as per instructions received from Milo B. Stevens & Co., of Washington, D. C., dated December 15, 1904; that from their letter of December 15, 1904, it appears that the firm had written to witness on November 16, 1904, forwarding an application and fee contracts and an agreement for Mrs. Reddick to sign for the sale of the warrant when secured; that witness has searched his files for 1904-05, and can not find any other communication from Milo B. Stevens & Co. with reference to this case; that witness's acts in the premises were purely ministerial, as a notary public, as witness knows nothing about bounty land claims; that witness does not recollect what contract or agreement Mrs. Reddick signed, and would not have remembered that there was any contract or agreement, but for the letter of December 15, 1904, from Stevens & Co.; that witness prefers to keep this letter to perfect his records, but is willing to submit it at any time; that witness does not remember what was offered for the warrant or what was represented to Mrs. Reddick as to the value of the warrant and does not know whether the warrant had any value or not, nor has he any recollection that Mrs. Reddick called upon him previous to

the execution of the application, nor about the terms of sale; but she may have done so, and that witness never heard the outcome of the claim. (See Special Examiner Tuckerman's report, pages 15 to 17.)

In the letter dated September 5, 1905, and addressed to Mrs. Reddick, Milo B. Stevens & Co., advise her that they have succeeded in having the warrant allowed and are forwarding to her an order on the Commissioner of Pension- to deliver the warrant to them, requesting her to date and sign the order and return it to them, stating that they will then get the warrant and prepare a proper assignment on the back of it to be executed by her, and that when executed she can send it to the Riggs National Bank, at Washington, D. C., with instructions to the bank to deliver it to the firm on their paying the bank \$200 for Mrs. Reddick. (See Special Examiner Tuckerman's report, page 23.)

In their letter of September 11, 1905, and addressed to Mrs. Reddick, Stevens & Co. advise her that they have forwarded the warrant to John C. Woodward, Mt. Olive, Miss., by registered letter so that she can execute the assignment and can thereafter receive the \$200.

(See Special Examiner Tuckerman's report, page 24.)

489 In their letter of September 19, 1905, Stevens & Co. advise

Mrs. Reddick that they have that day paid the Riggs National Bank the sum of \$200 for her and also paid the bank \$2.50 for Mr. Woodward, adding "it is not our intention to make any location with the bounty land warrant. We have purchased a large number of such warrants and have never made a location with any of them. We purchase and sell them again and that is where we get our profit. When we sell them, however, we have to guarantee them." (See Special Examiner Tuckerman's report, page 25.)

James Brizzolara, attorney, Fort Smith, Arkansas, testifies that he is a member of the firm of Brizzolara and Fitzhugh, attorneys, who are the attorneys for W. R. Abbott, of Fort Smith, Arkansas; that warrant No. 115700, issued to Sallie B. Reddick on August 28, 1905, for 160 acres, was purchased by witness's firm for W. R. Abbott, from R. A. Fennell, of 1110 F street, N. W., Washington, D. C., at the rate of \$4.50 per acre (or \$720); that they have no correspondence from Mr. Fennell referring to the business descriptive of this warrant, as it was probably received with one or more warrants, and the correspondence merely relates to the number of acres represented by the warrants mailed; and that they have never had any correspondence with Milo B. Stevens & Co., Thomas R. Harney, or any member of the firm of Milo B. Stevens & Co., relative to the purchase of this or any other warrant. (See report of Special Examiner

Bowie, pages 6 and 7.)

490 In her letter filed June 6, 1907, Mrs. Reddick, the warrantee, states that since May 10, 1907, she has received from Milo B. Stevens & Co., a check for \$455, representing the difference in the amount paid her for her warrant shortly after its issue, and the amount for which it is stated the warrant was sold by said attorneys; and also that Stevens & Co. sent her a statement of the transaction for her to sign, acknowledging the receipt of the check; that, according to this statement they bought the warrant from her for

\$200 and sold it for \$680, and their commission was \$25, leaving a balance of \$455, for which they sent her a check.

Case #32, Eliza Stevens, warrant No. 97082-120-55, issued October 9, 1905.—Eugene E. Stevens and Thomas R. Harney, on August 11, 1904, jointly, filed the declaration of Eliza Stevens, aged 66, for a bounty land warrant. On August 17, 1904, they, jointly, filed fee agreements executed in conformity with the provisions of the act of July 4, 1884. They prosecuted the claim to a successful issue, and on October 21, 1905, the warrant was delivered to and receipted for by them. (See original papers in the bounty land claim.)

The General Land Office reports that this warrant has not been returned as located.

Eliza Stevens, of 130 Rusk street, San Antonio, Texas, aged 69, on January 12, 1907, testifies that she did not know anything about being entitled to a bounty land warrant until she received a
491 letter from Milo B. Stevens & Co. informing her that she was entitled to one, and she thereupon went to Mr. Ben Fisk, who was a clerk for Mr. Nat Lewis and that he made an application for her right away; that witness remembers that Milo B. Stevens & Co. wrote, asking what she would take for her warrant, but they did not make any offer at that time as witness understood it; that witness had Mr. Fisk write to them that she could not put any price on the land warrant, as she did not know whether she would get it or not, and that they wrote offering to give her \$250 for her warrant; that witness could not give the date of this offer, but knows that it was before she got word that her warrant was allowed; that this letter was sent to Mr. Lewis, and in it the attorneys offered to give Mr. Lewis \$25 if he would help them buy the warrant from witness, and Mr. Lewis never answered that letter; that this letter was written, witness believes, before she got word from the Pension Bureau that her claim was rejected; that witness got another letter from Stevens & Co., in which they offered her \$325 for the warrant, this being the day before she got word that her warrant was allowed, and witness believes that there were several letters offering different sums for the warrant, all before she knew she could get any land; that they made several statements as to the value of the warrant, all to the effect that it was not worth much; that witness never signed an agreement
492 to sell the warrant, and Mr. Lewis advised her not to take less than \$500 for it, but witness finally decided that she would accept the offer made by Milo B. Stevens & Co. and remembers signing a paper authorizing the Bureau to turn the warrant over to that firm; that witness sold the warrant for \$325, but \$25 went for the attorney's fees, so she got \$300 net for the warrant; that witness went to the National Bank of Commerce with Mr. Fisk and got the money and signed the warrant at the bank, and she knows that the warrant never came into her possession except to sign it at the bank; that witness believes that the check was drawn to her order and sent by Milo B. Stevens & Co., but can not give the date; that witness can not testify positively about signing the warrant, nor to whom it was assigned, as she can not remember things as well as she used to, but that Mr. Lewis and Mr. Fisk know all about the mat-

ter, and perhaps they have the letters written by the attorneys, as witness can not find any letters from them. (See Special Examiner Smith's report, pages 7 to 10.)

Ben S. Fisk, justice of the peace, San Antonio, Texas, testifies that he has known Eliza Stevens, the warrantee, all of his life; that she came to him with a letter from Milo B. Stevens & Co., of Washington, D. C., in which they informed her that she would probably be entitled to some bounty land, and witness wrote to the firm for her and they sent her proper blanks to fill out, and witness made
493 out these blanks for her at the time that he had office-room with Mr. Nat Lewis; that from the time that the application was sent in to the time that the warrant was issued was many months; that about six weeks after the application was made, Mrs. Stevens received a letter from Milo B. Stevens & Co. offering to buy the warrant, and it is witness's impression that they offered \$400 for the warrant at first, and subsequently offered less; that they were instructed to go ahead and secure the warrant and their fee of \$25 would be remitted to them; that witness wrote to some firm in Kansas City and to some company in St. Louis about the sale of the warrant, but they stated that when the warrant was secured they would talk about buying, or at least that was what witness inferred from their responses, as they did not know where the land would be located and it might be almost worthless; that a smaller offer made by Stevens & Co., was finally accepted by the warrantee; that said offer was made several months before the warrant was issued; that witness is positive that the firm represented that the warrant would not be worth any more than they offered for it; that witness does not possess any of the correspondence connected with this matter; that witness answered the letters for Mrs. Stevens and she signed them; that witness knows that Mrs. Stevens finally decided to accept the
494 offer of Milo B. Stevens & Co., Mr. Lewis, witness advising her to do so; that the agreement to sell and accept was made in the regular correspondence, and witness does not believe that Mrs. Stevens ever made or signed a regular form of agreement to that end, but it was the understanding before the warrant was issued that it was to be sold to the firm and it was only about a month after the offer of the firm was accepted that Mrs. Stevens received word that the warrant was allowed; that Stevens & Co. sent a form for Mrs. Stevens to sign to authorize the Pension Bureau to turn the warrant over to said firm, and subsequently received a letter from the firm stating that she could go to the National Bank of Commerce and receive her money, and Mrs. Stevens then came to witness and they went together to the bank and Mr. Magruder brought out the warrant and a draft; that Mrs. Stevens signed the warrant, executing it before witness and received a draft for \$300; that the warrant did not come into her possession except simply to sign; that witness feels positive that he saw a letter written by the firm to Nat Lewis asking him to use his influence with Mrs. Stevens to get her to sell the warrant, but does not remember the consideration offered, and he knows that the letter made Mr. Lewis very angry and that he would have nothing to do with the matter; that the firm

never made any offer to witness; that witness recalls that the bank clerk was very careful not to let the warrant get out too far
495 from his hands, and witness can not state to whom the warrant was assigned; that is, whose name was to the paper which Mrs. Stevens signed. (See Special Examiner Smith's report, pages 11 to 14.)

Nat Lewis, of 118 Main Plaza, San Antonio, Texas, testifies that he can not state the details as to the application of Mrs. Stevens for a land warrant as he had nothing to do with the preparation of the papers, but recalls having given Mrs. Stevens a little advice as to the sale of the warrant; that the matter was pending quite awhile and there were at least two offers made by Milo B. Stevens & Co. for the warrant. Witness can not state the date of these offers, but they were made prior to the time that the warrant was issued; that witness has none of the correspondence in his possession though he recalls that the first offer was what witness believed to be very low and was, to the best of witness's recollection, \$160 or \$200; that witness advised Mrs. Stevens not to accept that amount and she wrote to the firm to that effect, and that they *they* finally offered her \$300 or a little more and witness finally advised her to accept as she could not handle the land; that witness believes that it was Milo B. Stevens & Co. who made these offers, giving the impression in their letters that said warrant would not be worth more than the amount they
496 offered for it; that a smaller amount would be a fair amount for it; that the first proposition is to the sale of the warrant was made by said attorneys; that it is witness's impression that the attorneys sent a form of agreement for claimant to sign, provided she accepted their offer and, to the best of witness's recollection, Mrs. Stevens did sign an agreement to sell the warrant, though witness can not swear positively as to that, and if she did sign such an agreement, it was before the warrant was issued; that the warrant was sold to Milo B. Stevens & Co. for the last sum offered and the firm were to get nothing as her agents to sell the warrant, but acted as buyers who were trying to obtain it as cheaply as possible; that the attorneys sent a paper to sign, authorizing the Pension Bureau to turn over the warrant to them, which she did; they then instructed her that they had sent the warrant to the National Bank of Commerce and Mrs. Stevens went there and signed it and got the money, and that witness has no recollection of having received any letter from said firm with any kind of an offer or request to in any way influence Mrs. Stevens in the sale of the warrant. (See Special Examiner Smith's report, pages 15 to 17.)

A. L. C. Magruder, assistant cashier, National Bank of Commerce, San Antonio, Texas, testifies that Milo B. Stevens & Co., attorneys, of Washington, D. C., wrote the bank a letter relative to the handling of a warrant which had been issued by the Government to Eliza
497 Stevens, giving instructions as to the handling of the papers which were inclosed; that among the inclosures were a bounty land warrant, No. 97082 for 120 acres, also an agreement signed on September 24, 1905, by Mrs. Eliza Stevens, agreeing to assign the warrant to Thomas R. Harney, of the firm of Milo B.

Stevens & Co., and a communication from the Commissioner of Pensions dated October 13, 1905, to which was attached a fee contract whereby Mrs. Stevens agreed to pay \$25 as a fee; that these papers were evidently sent to the bank so that the instructions could be followed; that the firm instructed the bank to have Mrs. Stevens sign and execute the assignment on the warrant; that Mr. Fisk introduced Mrs. Stevens and she made the assignment according to the instructions mentioned; that the bank was instructed to return the warrant to the attorneys through the Riggs National Bank, of Washington, D. C., and it is witness's recollection that said bank sent a remittance to be paid to Mrs. Stevens, and that the amount of the remittance was \$300, which was paid somewhere between October 26, and November 5, 1905; that the firm instructed the bank to have the Riggs National Bank pay the charges which may have been included in the check sent by the Riggs National Bank to the National Bank of Commerce, but that Mrs. Stevens received \$300; that the letter which the attorneys sent did not mention any sum of money to be paid to any other individual than Mrs. Stevens in connection with this

498 warrant, and that witness would like it distinctly understood that he does not swear positively that said papers mentioned above as having been included in the papers sent to the National Bank of Commerce were actually sent as stated in the letter, but is very certain that each of said papers were sent therewith or he never would have completed the transaction. (See Special Examiner Smith's report, pages 19 to 21.)

In her letter filed June 3, 1907, Eliza Stevens states that since May 10, 1907, she has received from Milo B. Stevens & Co. a check for \$200, representing the difference in the amount paid her for her warrant shortly after its issue, and the amount for which said firm sold said warrant. (See original letter.)

Edwin W. Spalding, of 624 F street NW, Washington, D. C., testifies that on November 3, 1905, he purchased from Milo B. Stevens & Co., through Thomas R. Harney, bounty land warrant No. 97082-120-55, issued to Eliza Stevens for the sum of \$510, and that while the transaction was with Mr. Harney, the check was drawn to the order of Milo B. Stevens & Co. (See Special Examiner John W. Hall's report, pages 12 to 15.)

Case # 33. William C. McKean, warrant No. 542-40-45, issued December 1, 1905. On March 8, 1905, Eugene E. Stevens and Thomas R. Harney, jointly, filed the declaration of William C. McKean, aged 79, for a bounty land warrant. No fee agreements were filed in this case. Said firm filed an affidavit of their client, executed

499 March 16, 1905, in which he alleged that he was 79 years of age. They prosecuted the claim to a successful issue, and on February 7, 1906, the warrant was delivered to and receipt for by them. Having thus obtained possession of the warrant, said firm caused to be endorsed thereon a form for an assignment of said warrant to Thomas R. Harney, a member of said firm, and an assignment to Mr. Harney was executed by the warrantee on February 13, 1906. On February 27, 1906, Thomas R. Harney assigned said warrant in blank and forwarded the same to Florida, where it

was sold to Angus J. Conoly, of Agnes, Florida, whose name was inserted in the second assignment mentioned, and he used the warrant in making a location on April 10, 1906.

William C. McKean, aged 80, of Seguin, Texas, in his deposition of November 13, 1906, testifies that his application for a land warrant was made through Milo B. Stevens & Co., of Washington, D. C.; that at the time that the case was started, said attorneys made two propositions, offering to prosecute the claim for \$25, or give their services free, if witness would sell them the warrant for \$50, and witness made a contract with said attorneys, agreeing to sell the warrant for \$50, this was about the time witness first applied; that witness can not give the exact date; that witness does not know where the correspondence with reference to this matter is; that witness does not think that Stevens & Co. ever made any statement in the correspondence as to the value of the warrant; that witness received

500 \$50 for his warrant; that witness does not remember to whom the warrant was sent or when it came, and can not say

whether the warrant was sent to a bank or not, but he went to town and assigned the warrant in the clerk's office, and Mr. Tegener and witness went to the bank and got the money; that the warrant never came into witness's hands, except just to sign it, and witness does not remember when he got the money or check; that witness has the letter sent to him about the warrant in which they refer to the contract which witness signed, agreeing to sell them the warrant; that witness paid no fees except the notary's fees, and that witness turns over the letter mentioned to the special examiner.

The letter above mentioned is dated January 11, 1906, signed by Milo B. Stevens & Co., and addressed to William C. McKean, Seguin, Texas, with reference to the allowance of the bounty land warrant, and therein is contained the following statement:

"We have your written contract of March 16, 1905, witnessed by R. F. Wilson, agreeing to sell the warrant to us for the sum of fifty dollars provided we would make no charge for our services in prosecuting the case. * * * We therefore send herewith a letter addressed to the Commissioner of Pensions which you will please date and sign and return to us and upon receipt of it we will go to the Pension Office and secure the warrant and prepare an assignment on the back of it and send it to you for execution. The money will be paid to you through the bank." (See Special Examiner Smith's report, page 21.)

501 Mr. F. B. Tegener, of Seguin, Texas, testifies that he did some writing for William C. McKean in connection with his pension and bounty land claims, and remembers that Mr. McKean came to him about two years ago asking for assistance in the bounty land claim; that witness believes that the first communication came from Milo B. Stevens & Co. asking witness whether he would take up the case with Mr. McKean and ascertain if he would dispose of the warrant, if issued; that when the papers were sent to witness, witness had Mr. McKean come in and talk the matter over with him, and did the writing and sent the papers in; that the attorneys made two propositions:

1. To take up the case and receive a fee,—witness does not remember the amount, or

2. They would perform the service free, provided that Mr. McKean would sell the warrant to them for \$50.

That these propositions were made by Stevens & Co. before the claimant sent in his statement; that witness does not remember that there was any representations made by the attorneys as to the value of the warrant; that witness did not understand that the attorneys were to receive any fee from the Government in the case; that Mr. McKean accepted the proposition to sell the warrant to the attorneys for \$50 as he did not want to bother with locating the land; that the attorneys sent a blank agreement for Mr. McKean to sign to sell the warrant as stated, and that this agreement was signed about the time that the claimant sent in his affidavits; that Stevens & Co. offered to

502 give witness \$5, but there was no agreement about the matter; that all the correspondence relating to this case came through witness's hands, and when the warrant was issued, the attorneys sent witness a letter for the claimant to sign, authorizing the Commissioner of Pension- to deliver the warrant to them, and said letter was signed and returned; that witness has a letter from Stevens & Co. dated December 5, 1905, which makes the proposition with reference to the warrant clear; that the warrant was sent to witness to have Mr. McKean assign it to Stevens & Co., and witness and Mr. McKean went to the City Clerk where Mr. McKean made the assignment and witness then followed out Stevens & Co.'s instructions by sending the warrant to the Riggs National Bank, and soon after the bank sent to witness two checks, one for \$5 made payable to witness, and the other for \$50; that witness is not certain whether the last mentioned check was made payable to him, but knows he went with Mr. McKean to the bank when the check for \$50 was cashed; that it was understood from the beginning that the firm would buy the warrant and pay \$50 for it; that witness had the warrant in his possession for about two weeks, as Mr. McKean was gone when the warrant arrived, and when he returned he made the assignment; that the warrant was never in his care, except simply to sign the assignment, and that the two checks above mentioned were sent to witness by the Riggs National Bank, and that witness turns over to the Special examiner two letters from Milo B. Stevens & Co. with reference to this case. (See Special Examiner Smith's report, pages 10 to 13.)

503 On March 20, 1905, Milo B. Stevens & Co., received a letter from Mr. F. B. Tegerer, witness next above, which reads as follows:

"SEGUIN, TEXAS, *March* 16, 1905.

Milo B. Stevens & Co.

GENTLEMEN: I forward you with today's mail papers you sent me in regard to Wm. C. McKean, properly attested and duly witnessed.

In regard to Mr. McKean's financial condition, beg to say that it

is very poor and he is in need of all he can get. Hoping that the papers meet with your satisfaction, I remain,

Yours truly,
(Signed)

F. B. TEGENER,
City Clerk.

N. B.—Mr. McK. has no property and is dependent entirely upon others."

Stamped with the receipt stamp of Milo B. Stevens & Co., as follows: "Milo B. Stevens & Co., Claim March 20, 1905, Attorneys. Washington, D. C." (See attached to face of report of Special Examiner Smith for easy reference.)

Nellie McKean, daughter of the warrantee, of Seguin, Texas, corroborates the testimony of her father with reference to the prosecution of the claim for bounty land warrant. (See Special Examiner Smith's report, pages 17 and 18.)

In letter dated August 19, 1905, addressed to Mr. F. B. Tegener, Milo B. Stevens & Co. state, among other things:

"In reference to your request for a remittance of \$5, we have to invite your attention to our agreement in the case which was to the effect that such remittance was to be made upon the assignment to us of the warrant.

We shall be glad to keep said agreement as soon as the warrant has been assigned."

(See Special Examiner Smith's report, page 19.)

504 The second letter mentioned in Mr. Tegener's deposition will be found on page 20 of Mr. Smith's report, and reads as follows:

"WASHINGTON, *December 5, 1905.*

Mr. F. B. Tegener, Seguin, Texas.

DEAR SIR: We have secured the allowance of the bounty-land warrant case of William C. McKean. He has been allowed a warrant for forty acres. We are sending you herewith a letter addressed to the Commissioner of Pensions which you will please date, and then have Mr. McKean sign it and return it to us. We will take this letter to the Commissioner of Pensions and secure the bounty-land warrant and then write, as the regulations require, an assignment on the back of the warrant. We will then send the warrant to you to be signed by Mr. McKean and acknowledged before a Notary Public who has a seal. Then you can send the warrant to the Riggs National Bank with a letter instructing the bank to deliver the warrant to us upon our first paying the bank the sum of Fifty Dollars for Mr. McKean and Five Dollars for you. We will also pay the bank charges. This is in accordance with the agreement signed by Mr. McKean on March 16, 1905.

Do not delay, please.

Very respectfully,
(Signed)

MILO B. STEVENS & CO."

505 This letter is initialed "H-W," indicating that it was written by Mr. Harney.

Edwin W. Spalding, of 624 F street N. W., Washington, D. C., testifies that on February 21, 1906, he purchased of Milo B. Stevens & Co., warrant No. 542-40-55, for the sum of \$240, arranging the terms of sale with Thomas R. Harney, to the best of witness's recollection; that the warrant was transmitted to witness by Milo B. Stevens & Co., with letter dated February 21, 1906, and was assigned to Thomas R. Harney and by him assigned in blank; that a check for \$240, to the order of Milo B. Stevens & Co., was given in payment of this warrant, and that the warrant was issued to William C. McKean. (See Special Examiner John W. Hall's report, page 13.)

Angus J. Conoly, of Agnes, Florida, testifies that on October 30, 1905, he purchased three 40-acre warrants, and one 80-acre warrant from George R. Battle, of Perry Florida, and that he has a letter, addressed to George R. Battle, Perry, Florida, dated at Washington, D. C., February 24, 1906, and signed by Harvey Spalding & Sons, wherein is offered warrant No. 542-40-55, and that witness bought said warrant on March 3, 1906, and paid to George R. Battle the sum of \$6.50 per acre, and \$2.50 commission. (See Special Examiner Davis's report, page 3.)

506 The letter from Harvey Spalding & Sons, referred to in the deposition next above, is Exhibit B, in Special Examiner Davis's report, and in this letter it is stated:

"We have also sent Bounty Land Warrant No. 542 Act of 1855 for 40 acres which is to be delivered to your order upon payment of \$6.50 per acre.

We recently purchased this warrant and paid Six Dollars per acre and we thought that you might want the warrant at \$6.50.

If you cannot pay this price for it, kindly notify the Bank at once so that it can be returned to us.

This warrant has been recently issued and the assignment is perfect in every way."

In this case it will be observed that upon their own showing, Milo B. Stevens & Co. procured the assignment of the warrant in advance of its issue, and on the testimony presented they bought the warrant at the rate of \$1.25 per acre and sold it at the rate of \$6 per acre, and it was immediately thereafter sold at the rate of \$6.50 per acre.

Case #34, James Besser, warrant No. 49486-80-55, issued April 30, 1906.—On March 23, 1906, Eugene E. Stevens and Thomas R. Harney, jointly, filed the declaration of James Besser, aged 76, for a bounty land warrant. No fee agreements were filed in this case. They prosecuted the claim to a successful issue, and the warrant was delivered to and receipted for by them on May 14, 1906. Having thus received the warrant, said firm endorsed thereon a form for an assignment of the warrant to Thomas R. Harney, a member of the firm, and the assignment to Mr. Harney was executed by the warrantee on May 31, 1906. On June 6, 1906, Thomas

507 R. Harney executed an assignment in blank on said warrant. The name of David H. Duncan, of Standard, Louis-

iana, was subsequently inserted in the last-mentioned assignment, and the warrant was used by Mr. Duncan in making a location on June 28, 1906. (See original papers.)

James Besser, aged 77, of Huntsville, Texas, in his deposition of January 18, 1907, testifies that Milo B. Stevens & Co., of Washington, D. C., got the warrant for him for 80 acres of land, and he sold the warrant to them for \$250; that T. E. Humphrey, at Huntsville, did all the writing in connection with this matter, and it was through Mr. Humphrey that witness made the sale; that the letter dated March 13, 1906, which witness turns over to the special examiner, is the only one which he can find with reference to this matter; that witness heard some people saying that they got 160 acres, and as witness knew that he had only gotten 80 acres, he felt that he ought to have 160 as well as others, and he got Mr. Humphrey to write to the head pension man, at Washington, to find out about it; that Milo B. Stevens & Co. proposed to buy the warrant as soon as they got it; that witness was to pay them \$10 for getting it, and when they got it they offered to buy it, and they never offered to buy it before it was granted; that Mr. Humphrey did the trading with Milo B. Stevens & Co. and had the correspondence, and witness can not tell exactly when Stevens & Co. bought

the warrant, but it was not long after the warrant was issued; that Stevens & Co. sent the warrant for witness to sign, and after witness fixed up the warrant the money was sent to the bank in Mr. Humphrey's name and Mr. Humphrey paid witness the money; that witness was not satisfied with what he got for the warrant, but it seemed to be the most he could get for it, and that witness understood after the warrant was sold that Mr. Humphrey could have gotten more for it. (See Special Examiner Tracy's report, pages 8 and 9.)

T. E. Humphrey, attorney, Huntsville, Texas, testifies that he conducted the correspondence of James Besser with Milo B. Stevens & Co., and that on looking through his files he finds six letters and a telegram with reference to this matter, which he hands to the Special Examiner; that he rather thinks he had some correspondence with the firm prior to May 5, 1906, the date of the first letter turned over, but can not find any other letters and is pretty sure that this letter is the first one in which the attorneys said anything about purchasing the warrant; that the question of purchase did not come up until after the warrant was issued, and witness believes that the telegram,—Exhibit B,—is the first communication in which they set a definite price; that this correspondence gives a pretty good history of the transaction; that the warrant came with the letter dated May 21, 1906, and was turned over to James Besser by witness; that on May 25, 1906, witness wrote the attorneys that Mr. Besser was unwilling to accept their offer of \$200 for the warrant until he heard from some other parties in the Northwest with whom witness was corresponding in Mr. Besser's behalf, and that for the time being he would not be willing to take less than \$250. In reply to this Stevens & Co. accepted Mr. Besser's offer of \$250, as set forth in *in* their communication of May 28,

1906, and with that letter came a form for an assignment to execute; that on May 31, 1906, witness advised Stevens & Co. that he had delivered the warrant, properly signed and executed, to Gibbs National Bank, with instructions to forward to the Riggs National Bank to be delivered to Milo B. Stevens & Co. upon payment by them of \$260, and the response to that letter was their letter of June 5, 1906, which closed the transaction relative to the sale of the warrant of James Besser, and that witness also submits a subsequent letter from the attorneys, bearing date of June 21, 1906, and could not recall anything with reference to this matter without the correspondence.

In the letter dated May 5, 1906, and addressed to Mr. Humphrey, Milo B. Stevens & Co. state that they would like to have Mr. Humphrey represent them in the purchase of the warrant; that if Mr. Besser will state the lowest cash price he would accept for the warrant the firm would be glad to consider his offer, and if the offer is a reasonable one, would accept it; that the firm has purchased these warrants at from \$1 to \$1.50 per acre, and that if Mr. Humphrey can make a deal with Mr. Besser the firm would be glad to pay him the sum of \$10 for his services to them. (See Special Examiner Tracy's report, page 14.)

In telegram dated July (May) 15, 1906, Milo B. Stevens & Co. instruct Mr. Humphrey to offer \$200 for the warrant. (See Special Examiner Tracy's report, page 15.)

In the letter dated May 18, 1906, and addressed to Mr. Humphrey, Stevens & Co. thank him for the sum of \$10 for their fee in the prosecution of the claim of James Besser, inviting attention to their telegram of the 15th, offering \$200 for the warrant. (See Special Examiner Tracy's report, page 16.)

In their letter of May 21, 1906, addressed to Mr. Humphrey, Stevens & Co. state, among other things, as follows:

"It is rather difficult to place any definite price on a bounty-land warrant for the reason that after purchasing a warrant you may have to hold it for months before you can find a purchaser for it. We have never made, or attempted to make, any use of a bounty-land warrant beyond selling it again, and hence our profit comes from the selling of the warrant by us at a higher price than we paid for it. We had an offer for a warrant a few days ago and that is why we wired our offer of \$200 for it. We are willing to allow that offer to stand and if it is possible for us to increase it we shall be glad to do so. We think, however, that the best course for us to pursue is to have you take up the matter with Mr. Besser and then have him make us an offer. If we can handle the warrant at the price named by him and make any profit out of the transaction, we shall be glad to purchase it."

(See Special Examiner Tracy's report, page 17.)

In the letter of May 28, 1906, addressed to Mr. Humphrey, Milo B. Stevens & Co. accept an offer by Mr. Humphrey, in behalf of the warrantee, to sell the warrant for \$250, stating:

"The price you name, \$250, is really more than we can, ordinarily, afford to pay for this class of scrip, but in view of the fact that we have a possible purchaser for it we have concluded to

accept Mr. Besser's offer and you may therefore have him assign the warrant to Mr. Thomas R. Harney of our firm in accordance with the enclosed form and send the warrant to us through the Riggs National Bank, Washington, D. C., instructing the bank to deliver it to us upon our paying the bank the sum of \$250 for Mr. Besser and \$10 for you."

(See Special Examiner Tracy's report, page 18.)

David H. Duncan, of 1419 West 6th street, Pine Bluff, Arkansas, testifies that he is the David H. Duncan, of Standard, Louisiana, who has been buying scrip for some five years; that he never had any dealings to his knowledge with Milo B. Stevens & Co., Spalding & Sons, of Thomas R. Harney; that he has heard read a statement that the warrant of James Besser, warrant No. 49486-80-55, was located by him; that the scrip was bought from Frank H. Reger, of Denver, Colorado, or Charles P. Johnson, of New Orleans, Louisiana, who are the only parties with whom he has dealt; that witness is Secretary of the Standard Lumber Company, and finds on an examination of the stubs of his check book:

"Check #316, Citizens Bank, June 30, 1906, for \$600, Land Scrip," and on searching the records finds a draft dated June 28, 1906, to the order of Charles P. Johnson, for \$600, with an endorsement on the margin "80 acres Land Scrip," and that the warrant was paid for by this check. (See Special Examiner Buckingham's report, pages 5 and 6.)

512 In his letter, filed May 31, 1907, James Besser, the warrantee, states that since May 10, 1907, he has received from Milo B. Stevens & Co., a check for \$190, representing the difference in the amount paid him for his warrant shortly after its issue, and the amount for which said firm is said to have subsequently sold his warrant, and he has transmitted with his letter a statement of account, prepared by Milo B. Stevens & Co., which shows that on June 4, 1906, said firm paid Mr. Besser for his warrant the sum of \$250; that said firm sold the warrant for \$440, and that they transmit their certified check for the balance, \$190 (see original letter).

Case #35, Eva Elizabeth Harrell, warrant No. 49488-80-55, issued August 9, 1906.—Eugene E. Stevens and Thomas R. Harney, jointly, prosecuted this claim to a successful issue, and the warrant was delivered to and receipted for by them on August 29, 1906. The Land Office reports that the warrant has not been returned to said office as located. No investigation of the case has been made.

513 *Recapitulation of Known Facts in the 35 Cases Mentioned Above.*

Date of issue.	No. of acres.	Paid by Milo B. Stevens & Co. to client.	Restitution by Milo B. Stevens & Co.	Amount received by clients who sold their own warrants.	Residence of warrantee.	Fee agreements filed.
*1, May, 1903	120	.....	.....	.....	Texas.....	Yes.
2, May, 1903	160	.....	.....	.....	Indian Ter.....	Yes.
*3, Aug. "	160	\$200	\$469.	.....	Texas.....	Yes.
4, Aug. "	160	.....	.....	\$600	Texas.....	Yes.
5, Oct. "	160	.....	.....	500	Texas.....	No.
*6, Oct. "	160	450	147.75	.....	Texas.....	Yes.
7, Dec. "	160	.....	.....	475	Texas.....	No.
*8, Dec. "	160	.....	.....	.....	California.....	Yes.
9, Dec. "	160	.....	.....	500	Texas.....	Yes.
*10, Jan. 1904	160	200	255.60	.....	New York.....	Yes.
11, Jan. "	160	.....	.....	500	Texas.....	No.
*12, Mar. "	160	170	285.60	.....	New York.....	No.
13, Mar. "	160	.....	.....	.....	Texas.....	Yes.
14, Mar. "	160	.....	.....	.....	Texas.....	Yes.
*15, Mar. "	120	150	189.20	.....	South Carolina.....	No.
*16, Mar. "	160	.....	.....	.....	Texas.....	Yes.
17, Apr. "	120	200	139.20	.....	Louisiana.....	No.
18, Apr. "	160	.....	.....	470	Texas.....	Yes.
*19, Ap. "	80	100	230	.....	Tennessee.....	No.
20, June "	160	.....	.....	500	Texas.....	Yes.
21, June "	160	350	210	.....	Texas.....	Yes.
*22, June "	160	200	310.80	.....	South Carolina.....	Yes.
23, July "	160	.....	.....	500	Texas.....	Yes.
*24, Sept. "	120	150	272	.....	Texas.....	No.
514						
*25, Sept. 1904	160	215	.....	Dead.	Texas.....	Yes.
*26, Oct. "	80	100	250	.....	Texas.....	Yes.
*27, Jan. 1905	160	.....	.....	.....	Louisiana.....	Yes.
*28, July "	160	200	470	.....	Washington.....	Yes.
*29, Aug. "	160	225	455	.....	Maryland.....	Yes.
*30, Aug. "	160	75	580	.....	Missouri.....	Yes.
*31, Aug. "	160	200	455	.....	California.....	Yes.
*32, Oct. "	120	300	200	.....	Texas.....	Yes.
*33, Dec. "	40	50	.....	.....	Texas.....	No.
*34, April 1906	80	250	190	.....	Texas.....	No.
*35, Aug. "	80	.....	.....	.....	Florida.....	Yes.

* Warrants delivered to Milo B. Stevens & Co.

Under the law, their compensation for the prosecution of the thirty-five cases should have been \$725, and in seventeen out of the twenty-four cases in which the warrants were delivered to the firm, they have made restitution of the sum of \$5,109.15, stating in each case that the attorney's fee is deducted, hence to determine the amount which the firm received for a given warrant, the amount originally paid to the warrantee, the restitution made, and the fee to which the firm was entitled under the law

should be added, and case No. 30 is selected to illustrate this phase of the matter:

September 14, 1905.	Paid client	\$75
	Legal fee	25
May, 1907.	Restitution to client.....	580

September 19, 1905. Firm sold warrant for..... \$680

that is *today*, they procured their said client to assign to them the warrant which was the subject matter of the action in which they were given a power of attorney, on a basis of forty-six and nine-tenths cents per acre, and sold the warrant at four dollars and twenty-five cents per acre. The warrant was issued on August 28, 1905, assigned to Mr. Thomas R. Harney, in blank, on September 19, 1905, and used by Mr. J. F. King in making a location at the Gainesville, Florida, land office on November 9, 1905, and this was the thirtieth warrant procured to be issued by Milo B. Stevens and Company, and the seventeenth warrant delivered to that firm, in behalf of their clients by this Bureau.

Milo B. Stevens & Co. procured their client, Catherine Hogan (case No. 6, pages 9 to 22), to assign to them her 160-acre warrant, 516 issued October 3, 1903, for \$450, and sold the warrant for at least \$622.75, or at the rate of \$3.90 per acre, and the evidence shows that the price of warrants did not materially decrease at any time from October, 1903, to January, 1907, and was never less than \$3. per acre during said period. The firm not only handled warrants which they procured to be issued, but purchased warrants from non-clients, and Mr. Veatch has testified that he could not do business with the firm, because they wanted more than the Moses Company could sell for. It is certain that Messrs. Stevens and Harney were thoroughly in touch with the market and knew, to within a few cents, what they could get for Mrs. Hickman's warrant when they induced her to assign it to them for a grossly inadequate consideration.

Case # 36, John S. Pygall, Jane E. Billinton, and Franklin McClane, children of Thomas Pygall, duplicate warrants No. 42383-160-47.—Eugene E. Stevens and Thomas R. Harney, on February 13, 1905, jointly, filed the declaration of John S. Pygall, aged 517 70; Jane E. Billington, aged (?); and Franklin McClane, aged 56, for a duplicate of a warrant heretofore issued, and powers of attorney executed by said parties. No fee agreement was filed in this case. The duplicate warrant was issued on November 23, 1906, and was sent to John S. Pygall, of Rosendale, Wisconsin. The Land Office reports that this warrant has not been returned as located. The warrant was delivered to the warrantee, having been issued after the order prohibiting the delivery of warrants to attorneys had been promulgated.

John S. Pygall, aged 72, of Rosendale, Wisconsin, the senior claimant in this case, on October 22, 1906, testified that Milo B. Stevens & Co., of Washington, D. C. were the attorneys in his application for a duplicate warrant; that about two years ago he wrote to

Milo B. Stevens & Co., stating the facts with reference to the loss of the warrant, and asked whether it could be reissued, and they replied that they would look the matter up; that the firm then sent with their letter, dated December 16, 1904, powers of attorney and an agreement concerning the firm's fee for services, stating that it would be a great deal of trouble and expense and that if the claim-

ants were willing that they could do all the work and pay all
518 the expenses, like advertising, etc., and then buy the warrant for \$100, if reissued, and if not reissued, the claimants to pay

nothing and the firm to receive nothing; that acting on this statement of facts the other claimants made out a power of attorney for witness to have the case prosecuted in his name, and they all signed an agreement to sell the warrant, if reissued, to Milo B. Stevens & Co. for \$100 if they would prosecute the claim and pay the expenses; that Stevens & Co. prepared all the papers and there was no expense incurred at witness's end of the line other than to pay notary's fees to affidavits, and the power of attorney signed by witness and his sister Jane, and such fees were paid by witness and his sister and were small; that Stevens & Co. did not send them any money to pay any expenses, nor have they received anything from them like money in the form of a draft or cash; that witness believes that Stevens & Co. paid for some advertising, probably at Detroit, Michigan, and had to pay the expenses of proving the death of witness's brother William, and that in so doing they had to write out to California and get evidence; that the actual agreement made by the claimant with Milo B. Stevens & Co. was in writing and was sent to the firm and no copy kept of it, but it is witness's recollection that the agreement was to the effect that claimants engaged said firm to

prosecute the claim for a reissue of duplicate warrant No.
519 42384; that if they would prosecute the claim, pay all expenses, and give claimants \$100, the heirs consented and agreed to the proposition made by Milo B. Stevens & Co. as contained in their letter dated December 16, 1904, and made a verbal agreement among themselves to divide the \$100 if they got it. Witness further testifies to his correspondence with Milo B. Stevens & Co. with reference to this matter. (See Special Examiner Dague's report, pages 6 to 11.)

Jane E. Billington, aged 58, corroborates the testimony of her brother briefed next above.

The letters from Milo B. Stevens & Co. to Mr. John S. Pygall with reference to this case constitute exhibits A and B, pages 16 to 19, of the report of Special Examiner Dague. The initial letter reads as follows:

"WASHINGTON, *December* 16, 1904.

Mr. John S. Pygall, Rosendale, Wisconsin.

DEAR SIR: It is going to be very difficult to obtain a duplicate of the bounty land warrant that was issued to your mother and the five children, because it is going to be difficult for you to furnish the required evidence. However, we have concluded to try the case if the surviving heirs at law will agree to sell the warrant to us for one

hundred dollars (\$100) cash, provided we secure it. If the surviving heirs at law will agree to the above, we will make no charge for our services in prosecuting the case and we will pay for the advertisements that will have to be inserted in the newspapers, concerning the loss of the warrant. We will be to considerable expense in the matter and besides we will have to take all the chances of success. If the above is satisfactory to you, then we would suggest that you do this:

1. Sign the enclosed agreement and then get your sister, Jane E. Billington, to sign it. Then send it to your brother Franklin and ask him to sign it and return it to you to be sent to us, or have him mail it to us direct.

520 2. Have your sister sign the enclosed power of attorney marked A, giving you authority to have the case prosecuted. Then have two witnesses sign to the left of her signature and have the power of attorney acknowledged before an officer who has a seal. Then send the power of attorney to us.

3. Have your brother Franklin sign the enclosed power of attorney marked B and have two witnesses sign to the left of his signature and then have it acknowledged before an officer who has a seal. Then send that power of attorney to us also.

If your sister and brother will execute the enclosed powers of attorney it will save them the trouble and expense of executing separate and distinct applications. Upon the return of the agreement and the powers of attorney to us we will then prepare a proper application for you to sign and execute.

By the way, in referring to the previous correspondence had with you, we note that you say that upon the death of your mother at Sault Ste. Marie, Mich., your sister and your brother then went to Detroit, Mich. taking with them what effects they had and that while waiting for their uncle to come and get them at that place they were stopping, a trunk was broken open and your mother's shawl was stolen and in the shawl was the bounty-land warrant. Now, we would like to know the name of your uncle and as to whether or not he is still alive and if so, what is his address. We would also like to know where your brother and sister stopped in Detroit awaiting your uncles to call on them and where your uncle lived. Be sure and give us this information, because we will want to put it in an affidavit.

Also tell us when and where your brother William died.

Can you give us the names of at least two persons who have known the family for a great many years, giving the number of years, and who can make an affidavit to the effect that while they know nothing about the loss of the bounty-land warrant, yet they were often told by you or your sister concerning its loss and as to how it was lost.

Very respectfully,
(Signed)

MILO B. STEVENS & CO."

This is the only case in which Milo B. Stevens & Co. are charged with champerty, and the charge is based upon their own showing in the letter copied next above.

In his letter filed June 6, 1907, Franklin McClane, the youngest

of the claimants, states that he received \$100 from Thomas J. Tydings, of Moberly, Missouri, adding that there are three interested in the land warrant, Mrs. Jane E. Billington, Thomas S. Pygall, and witness, and that they were to receive \$100 each, or \$300 total, and had received no other payment than the \$100 which was made by Thomas J. Tydings, of Moberly, Missouri.

It is very evident that this claimant had not understood the agreement which was made with reference to this case, nor is there anything in the evidence to show why Mr. Tydings, of Moberly, Missouri, should have paid the sum of \$100 in connection with this matter.

Case §37, rejected application of Meta G. Thornton, widow of of Henry F. Thornton, 1st Virginia Volunteers, Mexican war, original No. 100874.—Milo B. Stevens & Co. were the attorneys of record in the application to complete the deceased soldier's claim for pension. (See papers in the pension claim.) Eugene E. Stevens and Thomas R. Harney, on February 18, 1904, jointly, filed the declaration of the widow, aged 57, for a bounty land warrant and articles of agreement in their favor, executed in accordance with the provisions of the act of July 4, 1884. Said claim was rejected May 18, 1904, on the ground that no title existed under the act of March 3, 1855, as the alleged service was not performed at the seat of war, and that no title existed under the act of February 11, 1847, as the soldier was discharged upon the application of friends and not
522 by reason of wound or injury received in the service prior to the close of the war with Mexico and before the expiration of the term of enlistment. From this action certain appeals were noted.

Meta G. Thornton, of 449 West 6th street, Lexington, Kentucky, testifies that she is a pensioner as the widow of Henry F. Thornton, and is the Meta G. Thornton who filed a claim for bounty land through Milo B. Stevens & Co., attorneys, of Washington, D. C., that a few days ago she destroyed a lot of old papers, and noted that one or more letters from Milo B. Stevens & Co. were among them and that she will see whether she can find any more letters and, if so, will deliver them to the special examiner; that no other person than herself has any knowledge of the letters passing between herself and Milo B. Stevens & Co. with reference to the prosecution of her bounty land claim, and that she can tell all about the arrangement so far as she is concerned; that Milo B. Stevens & Co. gave her to understand that she could get a bounty land warrant by making application and sent some papers for witness to sign, or, at any rate, she got the papers and went before Miss Yaden, a notary public, with some witnesses and signed the fee agreements for \$25 and the application; that she never paid Milo B. Stevens & Co. anything; the understanding was at first she was to pay them a fee of \$25 if they
523 procured a warrant for her, but they later wrote they thought they could sell it for \$1.25 per acre, or \$200 for the warrant, and wanted to know whether witness would take that amount for it, and witness accepted their offer, but that there was no contract signed, other than that witness wrote stating that she would accept the \$200; that that was about the beginning of the prosecution of

the claim, and they give witness no other information as to the value of the warrant other than that she might get \$200 for the 160 acres, or \$1.25 per acre; that later they wrote that they had been at considerable expense and thought witness ought to sell the warrant to them for considerably less; that \$25 would not pay for their printing in regard to the case, but witness did not think she ought to take less than \$200, as that was their own offer and witness had accepted their own proposition; that when witness wrote and refused to take less, Stevens & Co. wrote to her stating that she did not understand the matter or she would take less and hoped that she would let them hear from her again; that when the claim was rejected, witness dropped the matter, but Milo B. Stevens & Co. sent her some papers showing that they had appealed the case, and witness, the other day, burned a pamphlet that they had sent her showing their argument before the Interior Department; that the pamphlet which the special examiner shows to her is like the one she destroyed and is the pamphlet which Milo B. Stevens & Co.

524 said took so much money to get up; that Milo B. Stevens & Co.'s argument with witness as to the reasons for witness's selling the land warrant for a nominal sum, less that the offer which they had accepted, was that their legal fee of \$25 would not pay for the printing in the case; that witness has no copies of any letters which she wrote to the firm; that witness has searched for her correspondence and has found three of the letters from Milo B. Stevens & Co. relative to this claim and the sale of the warrant which covers the matter pretty well; that Milo B. Stevens & Co. have never written to her relative to these letters, nor have they requested that they be destroyed, and that the letters which she destroyed, she destroyed because she did not want them in the way, and that the witness turns over the letters which she has found to the special examiner and is sorry that the special examiner came to her and that she has to make trouble for any one.

The letters turned over to the special examiner by Mrs. Thornton are as follows:

"WASHINGTON, *May* 12, 1904.

Mrs. Meta G. Thornton, 228 N. Lewiston St., Lexington, Ky.

MADAM: We write to say that we are still awaiting the action of the Pension Bureau in your bounty-land case. It will probably be some little time yet before it is settled, but as soon as it is settled we will notify you.

By the way, do you care to sell the bounty-land warrant in the event of our securing it for you? If so, we believe that we can find a purchaser for it, provided you are willing to accept a reasonable offer for it.

525 We presume that you understand that the warrant does not call for any particular land. It simply gives you the right to take up 160 acres of Government if you can find any land at this late day that you would care to enter with it. It is not likely that you will want to use the warrant yourself and hence it will probably be to your interest to sell it for a cash consideration. We advise you

to sell it, but of course you can use your own pleasure in the matter. You can probably get as much as \$1.25 per acre for the warrant, which will make the warrant bring you \$200 cash. Do you care to sell it. If so let us hear from you promptly about it.

Very respectfully,
(Signed)

MILO B. STEVENS & CO."

"WASHINGTON, April 14, 1905.

Mrs. Meta G. Thornton, 340 E. 3rd St. Lexington, Ky.

MADAM: We are sending you by to-day's mail a printed copy of our motion for reconsideration in your bounty-land case. By reading it you will see that your claim was rejected once by the Pension Bureau, and twice by the Honorable Secretary of the Interior. What the final decision will be it is impossible for us to predict with any degree of certainty.

We write to say that when you agreed to sell the warrant to us for \$200, provided we secured it for you, it was the practice of the Pension Bureau to allow claims similar to yours. Since that time the practice has been changed. We have gone to considerable trouble and expense, such as expense of printing, etc., and we are taking all the chances of success. Under the circumstances we feel that you ought to be willing to agree that if we finally succeed in securing the warrant for you, that you will sell it to us for a very nominal consideration. We have not asked you to bear any of the expenses, because of the uncertainty surrounding the case. We think, however, that you ought not to ask us to bear this expense without agreeing to sell us the warrant for a very nominal price, provided we are finally successful in securing it. Kindly let us hear from you in the matter, naming the price you are willing to accept, provided we are finally successful.

Very respectfully,
(Signed)

MILO B. STEVENS & CO."

526

WASHINGTON, April 25, 1905.

Mrs. Meta G. Thornton, Lexington, Ky.

MADAM: We have your favor of the 19th instant in which you decline *cline* to accept a less sum than \$200 for the bounty-land warrant, provided we are successful in procuring it for you.

We presume that you understand that our work in this case alone, if we charged for it in accordance with the practice of lawyers, would be at least \$150.00. When we made the contract with you for the purchase of the warrant, we had no idea that the claim was going to be rejected, nor had we any idea that we were going to *the* subjected to the expense of appealing it three times to the Honorable Secretary of the Interior.

The printer's bill alone, is about equal to the fee that you contracted to pay us.

It is possible that you have not heretofore understood these matters and we have, therefore, concluded to write to you again about it. We hope under the circumstances that you will consent to name

a more reasonable sum for the warrant, in event that we are successful in securing it for you. We think you ought to do it and we hope you will do it.

Very respectfully,
(Signed)

MILO B. STEVENS & CO."

(See original letters pages 13, 14 and 15, report of Special Examiner Crowe.)

With papers will be found in pamphlet form a brief of Milo B. Stevens & Co., as attorneys for appellant, dated March 27, 1905, the identical printed brief referred to in the testimony of Mrs. Thornton, and in the firm's letter of April 25, 1905, above copied, in which they state among other things "The printer's bill, alone, is about equal to the fee that you contracted to pay us." As shown by the original papers the only printed matter used by the firm in connection with this case is the brief in question, two forms for fee agreements, one form for a declaration, and two forms for affidavits (see original papers).

The Law Reporter Company, of Washington, D. C., reports that legal briefs to be furnished in thirty-six hours for a transient customer are furnished for \$10 per page and \$2 for the cover, and that this has been the price for such work for five years. The brief herewith consists of sixteen pages and one cover, and the outside price — a transient customer, and Milo B. Stevens & Co., were not transients but persons who do a large amount of printing, would have been \$18.

In this case the charge is an attempt to receive other compensation than that provided by the act of July 4, 1884, for their services in the prosecution of the claim, a demand for a greater compensation in an irregular and improper way, and a false statement with reference to the *actt* of the printer's bill used in connection with the case.

Case # 38, Harriet S. Bacot, warrant No. 52734-160-55.—The warrant in this case was issued on January 7, 1857, and was in the possession of Thomas W. Bacot, assistant United States Attorney for the District of South Carolina, and was purchased from him by Thomas R. Harney, a member of the firm of Milo B. Stevens & Co., on January 7, 1904, Mr. Bacot having previously applied for and having been granted letters of administration *de bonis non* on the estate of Harriet S. Bacot.

528 Thomas W. Bacot, Assistant United States Attorney, of Charleston, South Carolina, testifies that after the death of his father in December, 1903, he found among his papers, Warrant No. 52734, and made inquiry of the Hon. George S. Legree with reference thereto; that Mr. Legree referred him to Milo B. Stevens & Co., and witness was advised not to locate any land under the warrant, *rant*, but rather to administer on the estate of Harriet S. Bacot and dispose of or sell the warrant for \$200, which was the best price he could obtain, and thereupon witness administered upon the estate of Harriet S. Bacot, and on June 7, 1904, Mr. Thomas R. Harney called upon him, at Charleston, S. C., and paid him the sum of \$200 in money and asked him to assign said warrant in blank, he believing

at the time that he was getting full value for the same. (See Special Examiner Jennings' report, pages 6 and 7.)

Mr. Homer Guerrey, of 621 13th street, N. W. Washington, D. C., testifies that on October 4, 1904, he purchased warrant No. 52734-160-55, issued to Harriet S. Bacot, of Thomas R. Harney for the sum of \$510, and that so far as witness knows Mr. Harney was not representing the firm of Milo B. Stevens & Co. in this matter; that if witness remembers correctly he bought of Thomas R. Harney the warrant of John Andrews, warrant No. 115659, for \$576, being instructed to make check to Charles J. Chorgan, in care of

529 Thomas R. Harney, and that he understood at the time that the warrant was not the property of Stevens & Co. Witness also testified to having purchased certain other warrants from Stevens & Co. and from Mr. Thomas R. Harney.

Milo B. Stevens & Co. were not the attorneys of record in the prosecution of this claim for bounty land, and are not, for that reason, charged with unprofessional conduct in connection with this case, and the only object of presenting the testimony anove mentioned is to show the fact that on October 4, 1904, Thomas R. Harney, a member of said firm, gained knowledge that a 160-acre military bounty land warrant was worth \$510 by selling such a warrant for such sum on that date, and in that connection attention is invited to the deposition of James C. Veatch, manager of the W. E. Moses Land Scirp and Realty Company of Washington, D. C., of November 23, 1906, before Special Examiner John W. Hall, that he has carefully examined the files and record of the company and fails to find any record showing any transactions with the firm of Milo B. Stevens & Co., or any member of that firm regarding the sale of bounty land warrants with reference to which inquiry is made, and that as a matter of fact witness could not do business with said firm because they always wanted more for the warrants than the Moses Company could sell them for. (See Special Examiner Hall's report, page 16.)

530 *Personnel of the Firm of Milo B. Stevens & Company.*

Milo B. Stevens and J. B. Stevens were admitted to practice on May 9, 1868, and constituted the original firm of Milo B. Stevens & Company. J. B. Stevens was not readmitted to practice under the act of July 4, 1884, and the record is silent as to when he ceased to be a member of the firm.

Fay F. Luke was admitted May 7, 1875, and readmitted March 31, 1889, and the record is silent as to when he or she became and ceased to be a member of the firm.

Louis K. Gillenn admitted to practice on January 6, 1886, ceased to be a member of the firm on April 1, 1882, and Eugene E. Stevens, who was admitted to practice on April 15, 1882, and who was not readmitted until March 31, 1889, took his place in the firm.

Milo B. Stevens died on November 23, 1896.

In a circular issued December 1, 1896, and addressed to clients of the firm, the death of Milo B. Stevens was announced, and it was stated that Thomas R. Harney, who had been in charge of the

Washington, D. C., office of the firm, had been taken in as full partner of Eugene E. Stevens.

It appears that this partnership was formed after the death of Milo B. Stevens, and that Mr. Harney was not admitted to
531 practice until November 30, 1896, and it was not until December 14, 1896, *the* the Bureau was advised that Mr. Harney had acquired an interest in the business.

The Bureau questioned the right of Messrs. Stevens and Harney to practice under the firm name of Milo B. Stevens & Company, and on June 19, 1897, the Dep't declined to permit the use of the firm name, but thereafter, on June 24, 1897, reversed its action, and since that date under the Department's instructions the Bureau has recognized Messrs. Eugene E. Stevens and Thomas R. Harney under the firm name of Milo B. Stevens & Company.

Milo B. Stevens & Company were suspended from practice on September 5, 1871; restored January 26, 1872; again suspended October 23, 1883; restored October 31, 1883; and on January 5, 5, 21, and 28, February 5, and March 6, 1884, the Bureau recommended to the Department that the firm be disbarred from practice for withholding and persistently refusing to file evidence in their possession and refusing to further prosecute claims in which they were the attorneys of record until their demands on their clients for payment of fees were complied with, and these proceedings were dismissed by the Department on March 11, 1884, on the ground that in their letter of March 8, 1884, Milo B. Stevens & Company "agreed to comply with the demand of the Department with reference to the filing of testimony," the Department demanding that the firm was not to retain evidence to enforce the payment of fees.

532 Eugene E. Stevens was not a member of the firm when it was suspended on October 23, 1883, but when the proceedings were had in January, February and March, 1884, and Thomas R. Harney was not and had not then been admitted to practice. (See original papers in the attorney's jacket No. 1.)

John M. Bommhardt of Cleveland, Ohio, was by the Probate Court in and for Cuyahoga County, Ohio, appointed administrator of the estate of Milo B. Stevens, deceased, who died intestate, leaving a widow, Martha G. Stevens, an adult son, Eugene E. Stevens, and a minor daughter Evelyn Stevens. (Special Examiner Olmstead's report page 10.)

In the inventory of the estate filed by said administrator it was set forth that the deceased had a two-thirds ($\frac{2}{3}$) interest in the firm of Milo B. Stevens and Company, consisting of said Milo B. Stevens and Eugene E. Stevens valued at \$41,928.59, and the administrator's final account contains the following items and is accompanied by the following vouchers:

1897.

April 10. Received from sale of partnership interest, \$41,928.59.

April 10. Paid to Martha G. Stevens her share of partnership,
Voucher No. 25, \$13,976.19.

April 10. Paid to Martha G. Stevens, Guardian of Evelyn Stevens,
her share in partnership, Voucher 26, \$13,976.20.

April 10. Paid to Eugene E. Stevens his share in partnership,
Voucher 27, \$13,976.20.

Vouchers Nos. 25, 26 and 27 accompanied this account.

533 The final account of said administrator was approved June 7, 1897, as shown by the papers in file number 15,571, Probate Court of Cuyahoga County, Ohio. (See Special Examiner Olmstead's report, pages 12 and 13.)

As shown by a certified copy of the original record of the ceremony in the custody of the Probate Court of Cuyahoga County, Ohio, Martha G. Stevens (the widow of Milo B. Stevens) was married to Thomas R. Harney on October 19, 1898. (Mr. Olmstead's report, page 9.)

Evelyn Stevens, aged about 14 years, is in the custody of her mother and her natural and legal guardian, Mrs. Martha G. Harney, the wife of Thomas R. Harney. (Mr. Olmstead's report, page 5.)

Citation.

On April 13, 1907, Eugene E. Stevens and Thomas R. Harney were jointly charged with improper and unprofessional and illegal conduct in connection with the fourteen claims for military bounty land warrants jointly filed by them and mentioned below and given a period of thirty days to show cause why it should not be recommended that they and each of them be disbarred from practice before this Bureau. (See carbon copy of citation Exhibit A.)

This citation was forwarded by registered mail and delivered to and receipted for by the accused on April 15, 1907. (See registry receipt card Exhibit B.)

The cases in connection with which they were cited to
534 show cause are as follows:

Warrant No.	Name.	No. of case in fore-going brief.	Pages of citation relative to case.
1. 115,607	Catharine Hogan	6	20
2. 49,456	Elvira E. Graves	19	14, 15, 19, & 20
3. 97,078	Pauline Clark and William L. Shirkey	24	17 to 20
4. 115,661	John Clary	25	20
5. 49,482	Sallie Gipson	26	20
6. 115,689	Margaret Monaghan	28	15, 16, 19 & 20
7. 115,693	Mary E. Eaton	29	5, 7, 19 & 20
8. 115,698	Letitia J. Hickman	30	7, 13, 19 & 20
9. 115,700	Sallie B. Reddick	31	17, 19 & 20
10. 97,082	Eliza Stevens	32	20
11. 542	William C. McKean	33	16, 19 & 20
12. 49,486	James Besser	34	20
13. 42,382	Children of Thomas Pygall.	36	13 & 14
Orig. No. 100,874	Meta G. Thornton	37	1 to 4

While specific charges were made against the accused in connection with each of the fourteen cases above enumerated, the charges in connection with the first twelve cases were substantially the same, and in substance that Eugene E. Stevens and Thomas R. Harney filed the applications for the military bounty land warrants mentioned in this Bureau and prosecuted the same to a successful issue,

535 that in some cases prior to the filing of the claims, in some cases prior to the issue of the warrants, and in all cases prior to the receipt of the warrants by the warrantees, the accused entered into written or oral agreements with their said clients by virtue of which the warrants were to be assigned to the accused in event of issue, which said assignments are absolutely void under provisions of Section 2436 R. S. U. S.

That upon the issue of the warrants the accused caused the same to be delivered to them as the attorneys of the warrantees and thereafter endorsed upon the warrants forms for the assignments of said warrants to the accused or in blank for the benefit of the accused and transmitted the warrants to their various agents and caused their said clients to assign the said warrants to them for an inadequate price. That said warrants have never been legally delivered to the warrantees and are withheld from them in violation of the provisions of the Act of July 4, 1884, and of the professional duty of the accused in the premises. That it was the duty of the accused to have advised their said clients of all the facts which would have assisted said clients in determining the propriety for the sale of the warrants for the amounts offered. That they failed to so advise their clients, and by concealment, misrepresentations and false statements caused the warrants to be assigned to them at a fraction of their real value and thereafter sold said warrants at the market price, thus indirectly obtaining compensation for their services in

536 the prosecution of said claims in excess of the compensation to which they were entitled for the services in that behalf as provided by the Act of July 4, 1884, and in violation of their professional duty in the premises, and that each of the accused sacrificed the interests of their said clients to the sole end that they might procure sums of money to which they had and have no legal right or title.

In the cases Nos. 1, 4, 5, 6, 7, 8, 9, and 10, the accused filed duplicate articles of agreement, as provided by the Act of July 4, 1884, stipulating therein that they would endeavor to the best of their ability to represent the interests of their clients and would prosecute their claims in consideration of a fee of \$25.

It was also charged that the accused well knew that it was not their intention to collect the legal fee for their services in said claims but to indirectly obtain greater compensation than is provided by said Act by procuring the warrants by offering \$1.25 per acre; through taking advantage of the lack of knowledge of their clients in such matters and by selling such warrants at their market value. This in violation of the provisions of Sections 3 and 4 of the Act of July 4, 1884, and in violation of the confidence of said clients and of the professional duty of the accused in the premises, and that in filing said articles of agreement when it was not the in-

tention of the accused to comply therewith, they intended to and did for the time being deceive this Bureau in the premises.

537 In case No. 13, the claim of the children of Thomas Pygall, deceased, it was alleged that the arrangement between the accused and the children of the deceased soldier, as fully shown by the evidence briefed under case No. 36, by virtue of which Eugene E. Stevens and Thomas R. Harney were to pay the expenses of the prosecution of the claim for a duplicate warrant in consideration of the warrant being assigned to them for the sum of one hundred dollars in the event of its issue was and is champertous, and was and is a violation of the provisions of the Act of July 4, 1884, in that the accused in connection with said claim contracted for and demanded other compensation and greater compensation for their services in connection with the prosecution of the claim than is provided by the Act of July 4, 1884; and in case No. 14, the rejected claim of Meta G. Thornton, it was charged that on February 18, 1904, the accused jointly filed the application and the contract under the provisions of the Act of July 4, 1884, executed by their said clients, covenanting in the fee contracts to faithfully represent the interests of their said client and to prosecute her claim in consideration of a fee of twenty-five dollars.

That in their letter of May 12, 1904, addressed to Mrs. Thornton the accused stated *inter alia* that their said client could probably get as much as \$1.25 per acre for that warrant which would make the warrant bring her two hundred dollars cash, when as they
538 well knew on the day upon which said letter was written if they had the warrant in their custody they could have sold the same for not less than three dollars per acre.

It is further charges in this case that they made additional false and misleading statements to their said client, as is fully set forth on pages 1 to 4 of the citation, and that on April 5, 1905, the accused filed in the Department of the Interior a motion for reconsideration in the form of a printed brief consisting of sixteen pages and one cover, and in their letter of April 25, 1905, falsely stated that the printers' bill alone is about equal to the fee that their client had contracted to pay them (\$25.), and that under the circumstances they believed that their client would consent to part with the warrant, if issued, for a more reasonable consideration than that heretofore offered by them, when as they well knew said printed brief did not cost \$25., and that there was no rule, regulation, or practice of the Department of the Interior to require the printing of such briefs, and that in fact the brief was not printed for the benefit of their client, but was printed for the sole purpose of exploiting their business, as illustrated by their use of the brief in the claim of Mary E. Eaton. (See testimony briefed under case, No. 29.)

On May 14, 1907, Henry E. Davis of Washington, D. C., appeared as the attorney for Messrs. Stevens and Harney and re-
539 quested the continuance of the case for one week, which request was granted. (See original jacket.)

On May 22, 1907, Eugene E. Stevens and Thomas R. Harney filed their response to the citation (see Exhibit C) accompanied by an

argument in their behalf by Henry E. Davis, their attorney. (See Exhibit D.)

In substance Messrs. Stevens and Harney admit that they caused their clients above mentioned to assign to them the warrants which they procured to be issued for the amount stated in each given case, but they deny that at the time that they made certain propositions to their said clients that they were aware of the value of such warrants. They deny that they filed the fee agreements in the cases above specified with intent to deceive this Bureau and they make a specific answer in connection with each case denying that they have been guilty of improper, unprofessional, or illegal conduct, but admit that they were drawn into speculation in military bounty land warrants, pleading that their acts in that connection were not within the scope of the purposes for which the partnership was formed, and that to disbar them would work a great hardship on the widow and minor child of Milo B. Stevens.

With reference to the printed brief in the case of Meta G. Thornton they state that their mis-statement with reference to the cost of said brief arose out of the fact that when they wrote the letter to

540 Mrs. Thornton and subsequently wrote the letter with reference to the Eaton case they had not received the printer's bill, and for that reason did not know the cost of the brief, and in the case of the children of Thomas Pygall they deny that the contract entered into between them and their clients was champertous, improper, and illegal.

As fully shown by the table immediately after case No. 35 in the brief, the accused were the attorneys of record in not less than thirty-five cases in which military bounty land warrants were issued, and in not less than nineteen of these cases they procured their clients to assign their warrants to them for utterly inadequate prices. The date of the issue of the first warrant mentioned was in May, 1903, and the last mentioned was issued in August, 1906.

The first warrant purchased by them for an adequate price mentioned in the citation was No. 6, of this series, the 2nd was No. 12, the 3d was No. 15, the 4th was No. 17, the 5th was No. 19, the 6th was No. 20, the 7th was No. 22, the 8th was No. 24, the 9th was No. 26, the 10th was No. 28, the 11th was No. 29, the 12th was No. 30, the 13th was No. 31, the 14th was No. 32, the 15th was No. 33, the 16th was No. 34, and the 17th was No. 35, and they state that their answer and the testimony herewith transmitted shows that they purchased other warrants and sold other warrants than those which they procured for their clients, and it is as certain from the testimony ad-

541 duced as anything can be certain that they well knew within a few cents the market value of each of the warrants of their clients which they caused to be assigned to them, and which they state, to use the exact words of Mr. Thomas R. Harney, one of the accused, they purchased the warrants of their clients for the smallest sums for which they could procure them and sold them for the best prices which they could get.

The evidence in the first 12 cases named in the citation shows that the accused entered into agreements by virtue of which they were to

receive the warrants, usually at the rate of \$1.25 per acre, when issued.

It was their uniform practice, as shown by the evidence, to make such an arrangement in connection with each case which they filed in this Bureau, and their own letters show that they stated to their own agents that it was by securing the assignments of the warrants and selling them that they expected to make their profits in the business.

This being so, what could have been their motive in filing the fee contracts in the cases above mentioned, if it was not their motive to deceive the Bureau into believing that they were to receive legal fees for their services in such claims. There could have been no other possible motive, and on general principles intelligent men like the accused must certainly be held to have intended to do just what they

542 did. They did deceive the Bureau. Their statement that their action in purchasing the warrants of their clients and selling them again was, as they believed, the general practice in such matters and was known to the officers of this Bureau is without any proof to support it, and, as far as is known to me, is absolutely and wholly without foundation in fact.

During the period covered by these acts Eugene F. Ware and Vespasian Warner have held the office of Commissioner of Pensions.

On December 13, 1902, four months before the first warrant mentioned in the list of warrants obtained by Milo B. Stevens and Company was issued by Mr. Ware, upon the representation of certain attorneys, names unknown, that they had failed to receive the fees to which they were entitled in bounty land cases issued an order that "a land warrant will not be delivered to the claimant until the attorney shall have acknowledged the receipt of the fee for his services in the prosecution of the claim." Mr. Ware is an able lawyer and a man of ability, and it would be an insult to his intelligence to assume that he would have issued an order requiring satisfactory evidence of the payment of the attorneys' fees before the delivery of a warrant if he knew that as a matter of fact, and as asserted by Messrs. Stevens & Harney, it was the practice of attorneys to cause warrants which they secured to be issued to be assigned to them and sell them again.

543 Since I have been Commissioner of Pensions I am certain that no information reached me with reference to the alleged practice until sometime in May, 1906. It was reported to me that applications for duplicate warrants were being filed by certain attorneys and that there were reasons for the belief that they were based upon data illegitimately obtained from some unknown source.

To the end that the source might be determined and the remedy applied, I detailed the Principal Examiner of the Law Division instructing him to get at the facts, and in May 1906 he obtained at the Land Office and elsewhere testimony which conclusively proved that certain attorneys had been permitted at the Land Office to examine the suspended files, taking the cases singly and in bunches, and had thereby obtained the data with reference to these claims upon which they based their applications. In the course of Mr. Stewart's investigation of this phase of the matter his attention was

called to the singular fact that there were certain cases in which certain attorneys had represented the warrantees before this Bureau and had also represented the assignees before the Land Office, and the question arose as to how this happened, and on drawing the original warrants and examining the assignments thereon it was then ascertained that the warrants had been assigned to the attorneys who had procured their issue. This fact was reported to me, and, so far as I know, it is the first information which the officers of this Bureau received that attorneys were purchasing and selling warrants which they had procured to be issued.

544 Further investigation was had and an order was issued prohibiting any attorney from obtaining any information whatever from the files of this Bureau in any case in which he had not filed a duly executed power of attorney, and a circular order was issued by the Land Office to stop the obtaining of information to be used in connection with applications for duplicate warrants. Investigations were ordered into various bounty land cases admitted by this Bureau (in various sections of the country), and the testimony obtained shows that Milo B. Stevens & Company, Harvey Spalding & Sons, William E. Moses and Edgar T. Gaddis had procured certain warrants which they had caused to be issued in their capacity as attorneys of record before this Bureau assigned to them at an inadequate price and had subsequently sold the same at their market value.

October 10, 1906, an order was issued abrogating the oral order of Commissioner Ware of December 13, 1902, and providing that upon the issue of an original or duplicate land warrant the same will be forwarded to the claimant by registered mail and the receipt card will thereafter be filed with the papers in the claim and be accepted as *prima facie* evidence of the delivery of the warrant to the claimant. In no case shall a bounty land warrant be delivered to any other person than the claimant, nor shall the delivery be made in any other way than as provided in this order. (See copy of Order 85 herewith.)

And further I caused citations to be issued against each of the attorneys who were shown by the evidence obtained on this investigation to have resorted to improper, illegal or unprofessional conduct. One of these men has been disbarred. 545 The cases against three of them are now pending before you and two other cases are now pending before this Bureau.

I think that these facts absolutely rebut the assertion of Messrs. Stevens and Harney that the officers of this Bureau knowingly permitted attorneys practicing before the Bureau to take advantage of the ignorance of their clients and thus obtain compensation to which they were not entitled under the law for services in the prosecution of bounty land claims. It seems useless to discuss the other points raised in the answer of the accused.

To the end that no injustice might be done them, on May 22, 1907, a letter was written to Mr. Davis, their attorney, stating that this matter would be held in abeyance for a period of ten days to allow Messrs. Stevens & Harney to file such evidence as they may

possess and they may desire to offer in support of the allegations contained in their joint response to the citation. (See Exhibit E.)

No evidence has been filed in response to this letter, though a considerable period of grace has been allowed.

The answer is in substance a plea in avoidance, in which the principal specific charges are admitted to be true, and hence it only seems necessary to consider their appeal for clemency. In his letter of May 22, 1907, transmitting the answer to the citation

546 Mr. Davis states that he deems it not impertinent to say that the gentlemen affected have long been of good professional standing before the Department and of similar good personal standing in the community. That Milo B. Stevens, the founder of the firm occupied a position before the Department and in the community enviable in every respect, and that his widow and minor daughter who are the beneficial owners of more than one third interest in the firm's business would be to that extent injured by any action such as the citation imparts, notwithstanding that each is personally wholly irresponsible for the actual conduct of the business; that Mr. Harney is a director of one of the local banks, and, like Mr. Stevens, has a wide circle of friends and acquaintances in business circles; that Mr. Eugene E. Stevens is connected with various social organizations and philanthropic associations, and that Messrs. Stevens and Harney of their own motion refunded by certified check to each client the difference in the amount paid the client for the warrant by the firm and the amount for which the firm subsequently sold the warrant, as fully set forth on page 25 of their answer.

It would have greatly simplified the work of this Bureau if Messrs. Stevens and Harney had deemed proper to frankly state just how much was refunded to each client and to what clients refundments were made, but they did not deem it proper to make a

547 frank statement on this point, and hence as the only means of ascertaining the facts at short notice the Bureau wrote letters to the clients in the cases in which the warrants were delivered to them and also to the clients who secured their own warrants.

This Bureau concedes that in 17 out of the 24 cases in which the warrants were delivered to the firm they have made restitution of the sum of \$5,109.15, an average of \$300 per case, leaving 7 cases to hear from, which should make the total amount refunded approximate the sum of \$7,209. The correspondence develops the fact that in at least one case where the warrant was not surrendered to the firm the firm nevertheless procured the warrant by their stereotyped method and sold it at a large profit, and hence this Bureau can not state with any degree of certainty as to whether whole refundment was made in each case, though the circumstances are such as to suggest that the proper refundments were made. These refundments were made by checks dated May 10, 1907, the citation was issued on April 13, 1907, and William E. Moses, attorney, of Denver, Colorado, and Washington, D. C., was disbarred on April 17, 1907, for committing exactly similar offenses to those charged against Milo B. Stevens and Company in the first 12 cases named in the citation, and these facts would seem to take from what

is urged as voluntary action on the part of the accused, at least the greater part of this merit, and to indicate that they made the restitution for the simple reason that they had no defence to offer in the charges preferred against them and no hope to prevent disbarment except by an appeal for mercy based upon a return of their ill-gotten gains.

As shown by the testimony briefed above, Martha G. Stevens, the widow of Milo B. Stevens, on April 10, 1897, received and receipted for the sum of \$13,976.19 for her share of the partnership of the deceased husband in the firm of Milo B. Stevens & Co. and on the same day received and receipted for the sum of \$13,976.20 for the share of her daughter and ward Evelyn Stevens.

There is no evidence before this Bureau that subsequent to April 10, 1897, Mrs. Martha G. Stevens or Miss Evelyn Stevens acquired an interest in the firm, and as shown by the records of the Probate Court at Cleveland, Ohio, Martha G. Stevens ceased to be the widow of Milo B. Stevens on October 19, 1898, when she became the wife of Thomas R. Harney.

It would have been better and would have tended to inspire faith in the answer of Messrs. Stevens & Company if they had frankly stated these facts, and it is in keeping with the representations which they are shown to have made to their clients in these bounty land cases that they should have attempted to conceal from this Bureau that the widow of Milo B. Stevens became the wife of Thomas R. Harney on October 19, 1898, and was not in existence as Mrs. Stevens when they filed their response.

Milo B. Stevens is dead, and I do not desire to make any statements whatever with reference to the conduct of the firm during the period of his life time, except so much thereof as relates to proceedings which occurred after Eugene E. Stevens became a member of the firm, and then only desire that the record shall be considered in connection with Mr. Eugene E. Stevens. He was a member of the firm when it was suspended from practice on October 23, 1883, and he was a member of the firm on January 5, 21, and 28, February 15, and March 6, 1884, when the Bureau recommended to the Department that the firm be disbarred from practice, and on March 11, 1884, when the Department determined to dismiss these proceedings on the ground that Milo B. Stevens and Company had agreed to comply with the demand of the Department with reference to the filing of testimony and to cease retaining evidence to enforce the payment of fees.

The attorneys' files are herewith transmitted containing a full history of the cases for which the firm was suspended and its disbarment recommended, and further reference to that phase of the matter is deemed wholly unnecessary.

In considering the merits of the appeal for clemency it is believed that it should be taken into consideration that there is no provision of law under which a military bounty land warrant can be allowed on service performed subsequent to March 3, 1855, and that by reason of that fact the beneficiaries under the bounty land laws who were represented before this Bureau by Milo B. Stevens & Company

were with a single exception persons far advanced in age, most of them at least seventy, and some of them over eighty years old.

550 The testimony briefed in connection with the various cases shows how the firm of Milo B. Stevens and Company used the age and the poverty-stricken condition of certain of their clients to urge upon this Bureau the necessity of taking special action in the cases, and that the Bureau for humanity sake complied with the requests of Stevens and Company and promptly adjudicated the claims.

In a four room cottage opposite the church yard at Easton there resides one of the client-victims of Milo B. Stevens and Company, Mrs. Mary E. Eaton, warrantee under No. 115,693. Mrs. Eaton has dependent upon her a niece who is in delicate health; she is a pensioner as the widow of a sailor of the Mexican War. Her hair is as white as snow, and her condition is such that she can scarcely hold the pen to write her signature. She is only waiting until she is called to join her husband, and the surrounding circumstances of her case are such as to appeal to the heart of any man born of woman. When her warrant was allowed Milo B. Stevens and Company paid her two hundred and twenty-five dollars and sold that warrant for not less than six hundred and eighty dollars, depriving this venerable lady of the sum of four hundred and fifty-five dollars, more than twice her annual income from all sources: (See testimony briefed under case No. 29.)

551 It would seem that she should have been immune from the wiles of designing persons, and that all others in a similar predicament were entitled to the highest consideration from any man, whether that man was or was not a philanthropist.

After a careful consideration of the voluminous testimony procured in connection with this matter and of the answer of Messrs. Stevens and Harney to the citation, it is believed that each charge preferred against them is established beyond a shadow of a doubt, and that the only ray of sunshine in the entire record is the fact that the action of this Bureau should have been the means of compelling these men to make restitution to their client-victims to the sum of at least \$5,109 and probably the sum of \$7,209. These old folks needed the money and I am pleased that they got it.

The entire record is submitted for such action as you may deem proper.

Very respectfully,
(Signed)

V. WARNER,
Commissioner.

552

RESPONDENT'S EXHIBIT No. 20.

Filed June 9, 1908.

Law Division.

JEM.
S. A. C.
G. C. S.DEPARTMENT OF THE INTERIOR,
BUREAU OF PENSIONS,
WASHINGTON, D. C., *June 14, 1907.*

The Honorable the Secretary of the Interior.

Mr. SECRETARY: In my letter of the 12th instant, recommending the disbarment of Eugene E. Stevens and Thomas R. Harney, doing business under the firm name of Milo B. Stevens & Co., of Washington, D. C.; Cleveland, Ohio; Chicago, Illinois; and Detroit, Michigan, I referred to the fact that after the answer of Messrs. Stevens and Harney to the citation, a letter was written to their attorney, Hon. H. E. Davis, stating that action would be delayed for a period of ten days to allow Messrs. Stevens and Harney to file such, if any, evidence that they may possess and desire to offer in support of their allegation. After the period had elapsed and a considerable period of grace had been allowed, my letter of the 12th instant was written. Mr. Davis came to the Bureau today and stated that Messrs. Stevens and Harney had certain evidence which they desired to file in connection with this matter, and that, owing to the fact that he, Mr. Davis, had been employed in the trial of an important case before the Supreme Court of the District of Columbia, he had not been able to consider and file the testimony which the firm desired to present.

553 To the end that no injustice may be done to Messrs. Stevens and Harney, and that the record, when finally acted upon, may be complete, I request that my letter of the 12th instant be returned to be held until the 24th instant for the purpose of enabling the accused to file such evidence as they may desire to offer.

Very respectfully,

V. WARNER,
Commissioner.

554

RESPONDENT'S EXHIBIT No. 21.

Filed June 9, 1908.

Law Division.

JEM.
S. A. C.
G. C. S.DEPARTMENT OF THE INTERIOR,
BUREAU OF PENSIONS,
WASHINGTON, D. C., *June 25, 1907.*

The Honorable the Secretary of the Interior.

Mr. SECRETARY: I have the honor to return herewith my letter of June 12, 1907, recommending the disbarment of Eugene E. Stevens and Thomas R. Harney, of Washington, District of Columbia, doing

business under the firm name of Milo B. Stevens & Co., of Washington, District of Columbia; Cleveland, Ohio; Detroit, Michigan, and Chicago, Illinois.

After this letter, together with the original papers pertaining to the claims to which it relates, was transmitted to you, Hon. H. E. Davis, attorney for Messrs. Stevens and Harney, called at this Bureau and stated that he had been engaged in the trial of an important case in the Supreme Court for the District of Columbia, and, for that reason, had not had the opportunity of examining, preparing and filing certain testimony which Messrs. Stevens and Harney desired to offer in connection with these proceedings, and hence, on the 14th instant, on Mr. Davis's motion, I suggested that action be withheld until June 24, 1907, to permit the filing of such evidence as Messrs. Stevens and Harney might possess and desire to offer. On the afternoon of Monday, June 24, 1907, Mr. Davis brought to this Bureau the accompanying brief and testimony.

555 From the testimony presented by Messrs. Stevens and Harney, and from that obtained by this Bureau, it is certain that in twenty-two military bounty land cases in which Milo B. Stevens & Co., were the attorneys of record, they were entitled, under the provisions of the act of July 4, 1884, to fees aggregating the sum of \$475; that instead of collecting these fees as contemplated by the law; they procured their twenty-two clients to assign the twenty-two warrants to them upon the payment to their clients of the aggregate sum of \$4,313; that they sold these twenty-two warrants for the sum of \$11,629.95, and that since these proceedings were started they have made restitution to said clients the aggregate sum of \$6,841.95. The clients of this firm received from the firm slightly over 37% of the value of their warrants, and it is not deemed necessary to discuss this phase of the matter further.

Messrs. Stevens and Harney have filed the testimony of certain employees of their office and of certain warrant dealers for the purpose of showing that there was great stagnation in the bounty land warrant business during the year 1904, and for that reason Messrs. Stevens and Harney could not have had certain knowledge as to the value of such warrants when they procured their clients to assign the same to them at a fraction of their value.

556 It appears from their own showing that during the year 1903 and the year 1904, they handled at least fifteen warrants which they had procured to be issued in behalf of their clients and had procured to be assigned to them for an inadequate consideration, and the receipts filed by them show that the smallest restitution made by Messrs. Stevens and Harney in any of these cases was \$189.20, which was on the 120-acre warrant issued to Henry W. Fitzgerald, warrant No. 97075-120-55, dated April 26, 1904. It further appears from their own showing that they paid their client, Catharine, widow of Andrew Hogan, warrant No. 115607-160-55, issued October 23, 1903, \$450, in the first instance; that they made restitution to her amounting to \$147.75, and that they were entitled to \$25 fee, under fee agreements duly executed and filed.

On pages 122 and 123 of my letter of June 12, 1907, is a tabu-
20—1941A

lated statement, arranged in chronological order, of the transactions of Milo B. Stevens & Co., in connection with the sale of the warrants of their clients issued during the period from March, 1903, to April, 1906, and it will be observed that, upon their own showing, they made an average profit of 63%. In view of that fact, and as they admit that each transaction was profitable, it is manifestly futile

557 for the accused to contend that they did not know the value of the warrant in any given case when they procured its assignment to them for a fraction of its market price. If they did not know the value, they were certainly remarkably good guessers, and they did not lose money on a single warrant which they procured to be assigned to them.

The defense presents the affidavit of Frank D. Fawcett, the particular employee of Milo B. Stevens & Co., who attended to most of the bounty land business in their behalf, with reference to the alleged practice of attorneys purchasing warrants which they had secured to be issued, and with reference to the alleged knowledge of the officers of this Bureau in the premises. On page 5 of his affidavit, Mr. Fawcett testifies, *inter alia*, that in the military bounty land matters his dealings and conversations were usually had with Mr. Nathan D. Prentice, assistant chief of the Old War and Navy Division, the division having charge of the consideration of military bounty land warrants, and that Mr. Prentice knew, because he often spoke of the matter to witness, that attorneys were purchasing from their clients bounty land warrants, and that while witness can not say that the other officials in the division knew about it, yet he feels morally certain that they did, because it was the general practice of attorneys to do it, and that witness never heard the practice questioned
558 or any objection raised against it by any of the officials of the Department until December, 1906.

Mr. Prentice is dead.

The entire record is herewith returned with the renewal of my recommendation that Messrs. Stevens and Harney be disbarred from further practice before this Bureau.

Very respectfully,

V. WARNER,
Commissioner.

Memorandum.

For Respondent's Exhibits Nos. 22 and 23, see Relators' Exhibits "D" and "E" at pages 96 and 203 of this Transcript.

559

RESPONDENT'S EXHIBIT No. 24.

Filed June 9, 1908.

Index to Special Examiner's Report.

Pages.	Names of witnesses, etc.	Exhibits.	Depositions.	Reputation.
	Index.			
	Notice to claimant.			
1 to 3	Summary.			
	Claimant's statement.			
4 to 10	Charles M. Bryant	A	See summary.	
11 and 12...	W. L. Chamberlin.....	B	" "	
13 and 14...	Thomas W. Dalton.....	C	" "	
15 and 16...	Thomas H. Dawson.....	D	" "	
17 to 19.....	Stephen A. Cuddy.....	E	" "	
20 and 21...	George C. Stewart	F	" "	
22 to 24.....	James L. Davenport.....	G	" "	
25	L. M. Kelley	H	" "	
26 and 27...	Calvin Neilson	I	" "	

Recommendation :

Reference to the Commissioner of Pensions.

560

WASHINGTON, D. C., *October 29, 1907.*

Honorable Vespasian Warner, Commissioner of Pensions.

SIR: In compliance with your instructions of the 25th instant, relative to the disbarment proceedings now pending against Milo B. Stevens & Co., Attorneys, of Washington, D. C., Cleveland, Ohio, Detroit, Michigan, and Chicago, Illinois, I have the honor to submit the following testimony taken for the purpose of determining the truth of an assertion made by counsel in behalf of Milo B. Stevens & Co., that said firm, in purchasing the warrants which they had procured to be issued as attorneys of record before this Bureau for an inadequate consideration and in selling the same at the market value, were simply acting under a general practice with reference to such matters, which practice was well-known to the officers of the Bureau of Pensions. It was also stated in the course of the argument that Mr. C. M. Bryant, chief of the Old War and Navy Division, had in substance stated to Mr. Harney, of the firm of Milo B. Stevens & Co., that he (Mr. Bryant) did not want Mr. Harney to buy a bounty land warrant if one was issued in the claim of a relative of Mr. Bryant, but desired that she should have her warrant so that she could sell it at the highest price; this is to illustrate and accentuate the statement that the officers of the Bureau, well knowing that such a practice existed, permitted it to go unchallenged.

Bounty land warrants are adjudicated in the Old War and Navy Division and the Board of Review, and admitted cases are considered by Mr. Neilson, of your office. Questions relating to fees or any

matter relating to unprofessional conduct of attorneys in connection with such cases are handled in the Law Division.

The deposition of the chief and acting assistant chief of each of the divisions mentioned, of the deputy commissioners and of Mr. Neilson are hereto attached, and each, and especially those of Mr. Bryant and of Mr. Davenport, so clearly tell their own story that comment thereon seems to be wholly unnecessary. One of
561 the depositions is that of your examiner, taken by Special Examiner Hall. With reference to all the other witnesses who have testified attention is invited to the fact that they have all been employed in the Bureau for many years and have and are now holding important positions which it would be impossible for them to hold if they were not trusted as men of high character and good attainments. One of these gentlemen, Mr. Charles M. Bryant, testifies that he is a warm personal friend of Mr. Harney. It was at the suggestion of Mr. Bryant that the investigation initiated in May, 1906, and referred to in the testimony, was started. Mr. Bryant's reputation and character are of the very highest. He is entitled to and has the confidence of his associates. His explanation of his conversation with Mr. Harney with reference to his aunt's bounty land claim is clear and convincing, and he states in so many words, that he has no recollection of having known or heard of any such transactions as those for which the citation was issued in this case having occurred prior to seeing certain testimony in connection with the claim of James Stines, Warrant No. 115,692-160-55, one of the cases in connection with which the disbarment of William E. Moses, Attorney, of Denver, Colorado, and Washington, D. C., was recommended by this Bureau.

Very respectfully,
(Signed)

GEO. C. STEWART,
Special Examiner.

562

Deposition ———.

Case of ———, No. —.

On this twenty-ninth day of October, 1907, at Washington, in the District of Columbia, before me, George C. Stewart, a Special Examiner of the Bureau of Pensions, personally appeared Charles M. Bryant, who, being by me first duly sworn to answer truly all interrogatories propounded to him during this special examination redisbarment proceedings against Milo B. Stevens & Co., deposes and says:

Q. What, if any, official position do you hold in the Bureau of Pensions? A. Chief of the Old War & Navy Division.

Q. What division of the Pension Bureau has original jurisdiction in military bounty land claims? A. Old War & Navy Division.

Q. When such a claim is submitted for admission, to what division does it go? A. To the Board of Review.

Q. If the case is admitted by the Board of Review, to what division does it go? A. It comes back to the Old War & Navy Division after review by the gentleman designated by the Commissioner.

Q. Who is that gentleman? A. Calvin Neilson.

Q. Was Mr. Neilson formerly employed in the Old War & Navy Division? A. He was quite a good many years ago.

Q. So far as is known to you, has any relative of yours filed an application for bounty land, A. Yes sir. I learned some years ago that my grandfather had applied for bounty land. Since then his youngest and only surviving daughter, Sarah Bennett, has applied to complete the claim.

Q. Have you the papers in that claim before you? A. I have.

563 Q. Upon whose service is the claim based, and what is the title of the claim? A. The claim is numbered 185,037, on account of the service of Phillip Bryant in the New York Militia during the war of 1812.

Q. So far as is known to you, has any other relative filed an application for bounty land? A. As far as I know they have not.

Q. What action was taken in claim No. 185,037? A. It was rejected, on the ground of no title under the act of September 28, 1850, for the reason that the soldier did not serve thirty days and no title under the act of March 3, 1855, as the claimant was over the age of 21 years at that date.

Q. Was an appeal taken from this action. A. From papers just exhibited to me, it appears that an appeal was taken.

Q. What action was taken on the appeal and when was it taken? A. The decision of the War Department dated April 26, 1906, affirmed the action of the Bureau.

Q. Who were the attorneys of record in the application? A. Milo B. Stevens & Co. appear as such on the brief.

Q. When was the application filed? A. December 13, 1904.

Q. Are you personally acquainted with the members of said firm? A. I am personally acquainted with Thomas R. Harney and have met Mr. Eugene Stevens, but I would not recognize him and he probably would not recognize me, were we to meet.

Q. Is your acquaintance with Mr. Harney a mere casual acquaintance or are you warm personal friends? A. We are warm personal friends and have been for many years. Mr. Harney was assigned to a division of which I was assistant chief in 1882, as I remember, and we soon became well acquainted and our acquaintance ripened into a warm friendship, which has continued ever since. Our families have exchanged visits for many years.

564 Q. At any time while the claim of your aunt, Mrs. Sarah A. Bennett, No. 185037, was pending before the Bureau or before the Board of Appeals, did you have a conversation with Mr. Harney in the course of which you in substance stated to him that you did not want him to buy your aunt's warrant, but to let her have it so she could sell it at the highest price, as she needed the money? A. I never made any statement in regard to the purchase of the warrant. I never had any interest in the warrant or choice as to what might be done with the warrant. I remember having a conversation with Mr. Harney at some time when he told me that he was trying to secure the testimony of Samuel Merritt, and I

then explained to him that said Samuel Merritt was my uncle by marriage and told him what a vigorous, healthy man he was for his age, and I have no doubt that I then expressed a hope that if the claim was allowed my aunt might get the proceeds of the warrant, but as stated above, I never expressed or entertained any objection to its purchase by the company of which Mr. Harney was a member or by anybody else, because I knew that she was an old lady who could not locate the warrant and that she would get nothing out of it except by selling it to some person.

Q. On what date did you go on leave and on what date did you return to the Bureau during the month of October, 1907? A. I left the city on the evening of Saturday, the 19th. My leave commenced on Monday, the 21st, and I reached the city again this morning, Tuesday, the 29th.

Q. Where were you on Thursday, October 24, 1907? A. I was in Erie County, Pennsylvania.

Q. Did Mr. Harney know that you were in Erie County, Pa., on that date? A. I have no knowledge on that point.

Q. Did you speak to Mr. Harney about your intention to go on leave? A. No; the last time I saw him was at Mr. Bayly's funeral, and I have no recollection that I said anything to him about going on a vacation, and as far as I know he did not know that I was going on leave.

Q. Have you any means of fixing approximately, the date when you had the conversation with Mr. Harney referred to in your testimony, in the course of which the question of obtaining your uncle's affidavit came up? A. I have not.

565 Q. Does the fact that the affidavit of Samuel Merritt was filed in the case on May 23, 1905, assist your memory in any manner? A. It does not. I can not be positive that at the time we had the conversation referred to it was Mr. Merritt's original affidavit or a supplemental one that he was seeking.

Q. How long have you been employed in the Bureau of Pensions? A. Since April, 1870.

Q. How long have you been employed in the old War and Navy Division? A. Without consulting any record, it is my recollection that I was appointed chief in November, 1889.

Q. Has any case, at any time, been brought to your attention in which the attorney of record before this Bureau procured to be assigned to him a bounty land warrant which he had procured to be issued in behalf of a client and which had by him been sold at a considerable profit to the attorney? A. I had no knowledge of any such case until after the investigation started, conducted by Mr. Stewart, and then only from his statements as to what had been shown, except that I recall a claim that was sent to San Francisco for investigation and in which the woman who kept the house where the claimant roomed told the special examiner that the claimant had promised to sell the warrant to the attorneys for much less than we then understood warrants to be worth.

Q. Was the attorney in that case William E. Moses? A. That is my recollection.

Q. Was not that case sent to the Law Division for use in the investigation to which you refer? A. That I can't say; I think not.

Q. Can you state whether it was or was not the case of James Stines, Warrant 115692-160-55? A. I can not.

Q. I now hand you the original papers in the bounty land claim of James Stines, late 1st class boy, U. S. S. "Congress," Warrant No. 115,692-160-55, and request that you examine the report of Special Examiner Anthony and after having done so, state whether
566 it is to the Stines case that your testimony above relates. A.

Upon examination of Mr. Anthony's report dated May 17, 1905, I find the following: "I understand from Mrs. Harris that claimant has already agreed to transfer the land warrant when received to the attorney, W. E. Moses, for \$100." This satisfies me that this is the case I had in mind when making the statement above.

Q. Was this the first case in which you saw evidence that the attorney of record was attempting to secure the assignment of a warrant which he expected to have issued for a fraction of its real value? A. I think not. It is my belief that correspondence in other claims had been brought to my attention previously, indicating that attorneys prosecuting claims were seeking to secure an agreement for their assignment for considerations much below what was supposed to be the real value.

Q. What was done with the Stines case? A. The warrant appears to have been issued.

Q. What, if any, action was taken against Attorney W. E. Moses for his conduct in connection with the Stines case? A. I do not know.

Q. I now hand you a copy of the Commissioner's letter of November 26, 1906, addressed to the Secretary of the Interior and recommending the disbarment of William E. Moses and invite your attention to the caption of the second paragraph on the first page, asking you to state whether the James Stines case therein mentioned and upon which and other cases the disbarment of Mr. Moses was recommended is the identical James Stines case which you now have in your hands. A. The warrant number and name appearing in the letter referred to corresponds with that in the case in hand, showing it is the same.

Q. What, if any, action was taken in connection with the other cases mentioned by you in which there was correspondence tending to indicate a desire on the part of attorneys to purchase the warrants for a fraction of their real value? A. That I cannot say from memory now. To the best of my recollection, no action was taken at the time such matters were first brought to notice. Since matters of that kind have been taken up for consideration by the Law
567 Division, it has been the practice to send to said division any cases in which such correspondence came to light.

Q. Can you give the names of any attorneys who may have figured in these cases? That is to say, who had written letters indicating that they desired to purchase the warrants at a fraction of their real value. A. It is my recollection that they were cases in which W. E. Moses and Harvey Spalding & Sons were attorneys, and no others.

Q. Have you, from any source whatever, learned or heard that any other attorneys that Milo B. Stevens & Co., Harvey Spalding & Sons, William E. Moses and Edgar T. Gaddis had purchased or attempted to purchase from their clients for a fraction of their value, warrants which they had secured to be issued as attorneys and had sold the same at a profit. A. I have no recollection of any such transaction by any other attorneys than those mentioned, and had no knowledge or information as to any such transaction by Milo B. Stevens & Co. or Edgar Gaddis referred to above until after this investigation started.

Q. Have you understood my questions and have your answers been correctly recorded? A. I have. They have.

C. M. BRYANT.

Sworn to and subscribed before me this 29th day of October, 1907, and I certify that the contents were fully made known to deponent before signing.

GEO. C. STEWART,
Special Examiner.

568

Deposition — — —.

Case of — — —, No. —.

On this day of October, 1907, at Washington, in the District of Columbia, before me, George C. Stewart, a Special Examiner of the Bureau of Pensions, personally appeared W. L. Chamberlin, who, being by me first duly sworn to answer truly all interrogatories propounded to him during this special examination re-disbarment proceedings against Milo B. Stevens & Co., deposes and says:

Q. What, if any, official position do you hold in the Pension Bureau? A. Principal examiner and acting assistant chief.

Q. When did you first become acting assistant chief of the Old War & Navy Division? A. The summer following the date upon which Mr. Evans took charge of the Pension Bureau.

Q. Does the Old War & Navy Division have original jurisdiction in adjudicating military bounty land claims? A. It does.

Q. How long has the division had such jurisdiction? A. Ever since I have had any knowledge of it.

Q. At any time prior to the summer of 1906 did you know of any case in which an attorney of record in an application for a military bounty land warrant procured the assignment of such warrant to him and sold the same at a profit? A. I did not.

Q. Is it within your knowledge that such matters have been under investigation since May, 1906? A. Yes.

Q. Since that date have you learned as a result of such investigation that some attorneys had resorted to such practice? A. In conversation with the officials of the Bureau I have learned that.

Q. Who has been chief of the Old War & Navy Division since you have acted as assistant chief? A. Mr. Dalton, now chief of the Board of Review, after which Mr. Charles M. Bryant.

569 Q. Is Mr. Bryant now chief of that division? A. He is.

Q. Is Mr. Bryant on duty today? A. He is not; he is on leave.

Q. Do you know when he is expected to return to the Bureau? A. On the thirty-first of this month.

Q. Do you know whether either Mr. Dalton or Mr. Bryant are personal friends of Thomas R. Harney of the firm of Milo B. Stevens & Co.? A. I know that Mr. Bryant is.

Q. How do you know that Mr. Bryant is? A. I have been introduced to Mr. Harney by Mr. Bryant and I have frequently heard him speak of him as a personal friend.

Q. Are you satisfied that Mr. Bryant is friendly to Mr. Harney? A. I am.

Q. Do you know whether Mr. Bryant has a sister to whom a military bounty land warrant was issued or who has applied for such a warrant? A. I do not.

Q. Did you ever hear Mr. Bryant mention an application having been filed by his sister? A. I have no recollection of such a thing.

Q. Have you read the foregoing statement? A. I have.

Q. Did you understand my questions and have your answers been correctly recorded? A. They have.

Q. Have you any interest in this matter? A. I have not.

Q. Are you conscious of feeling any prejudice or dislike towards either Thomas R. Harney, Eugene E. Stevens or any member of the firm of Harvey Spalding & Sons? A. I am not.

570

W. L. CHAMBERLIN,
Deponent.

Sworn to and subscribed before me this 25th day of October 1907, and I certify that the contents were fully made known to deponent before signing.

GEO. C. STEWART,
Special Examiner.

571

Deposition — — —.

Case of — — —, No. —.

On this twenty-fifth day of October, 1907, at Washington, in the District of Columbia, before me, George C. Stewart, a Special Examiner of the Bureau of Pensions, personally appeared Thomas W. Dalton, who, being by me first duly sworn to answer truly all interrogatories propounded to him during this special examination *re* disbarment proceedings against Milo B. Stevens & Co., deposes and says:

Q. What, if any, position do you hold in the Pension Bureau? A. Chief of the Board of Review.

Q. Were you at one time Chief of the Old War & Navy Division? A. I was.

Q. For what period? A. From 1897 until November 1899.

Q. What division has original jurisdiction over military bounty land claims? A. Old War & Navy Division.

Q. To what divisions are such claims approved for admission submitted? A. Board of Review.

Q. When action is taken by the Board of Review to what division are the admitted cases sent? A. To the Commissioner, personally, now, and are then returned to the Old War & Navy Division.

Q. Please state when, if at any time, you obtained information to the effect that attorneys of record in such claims were procuring their clients to assign warrants which they had procured to be issued to be assigned to them or for their benefit and subsequently selling them at a profit? A. No personal knowledge of any such transaction.

Q. Prior to the time that the investigation of such matters was initiated by the Commissioner of Pensions in May, 1906, did you have any information from any source that any such practice existed. A. None whatever; I never knew of a case in which that was done.

572 Q. Are you acquainted with Thomas R. Harney or Eugene E. Stevens of the firm of Milo B. Stevens & Co.? A. No.

Q. If it had come to your knowledge that an attorney had secured a warrant which he had procured to be issued in his capacity as an attorney before the Bureau, and had subsequently sold said warrant at a large profit, would you have considered it your duty to report the facts, to the end that such action might be taken as the law and the facts warranted? A. I undoubtedly would. I never heard of such things and I was certainly in a position where I ought to know if such things were being done, as being in both the Old War & Navy Division and in the Board of Review I was in position to hear of such practice if it existed.

Q. Have you understood my questions, and have your answers been correctly recorded? A. Yes.

THOMAS W. DALTON, *Deponent*.

Sworn to and subscribed before me this 25th day of October 1907, and I certify that the contents were fully made known to deponent before signing.

GEO. C. STEWART,
Special Examiner.

573

Deposition ————.

Case of ————, No. —.

On this twenty-fifth day of October, 1907, at Washington, in the District of Columbia, before me, George C. Stewart, a Special Examiner of the Bureau of Pensions, personally appeared Thomas H. Dawson, who, being by me first duly sworn to answer truly all interrogatories propounded to him during this special examination *re* disbarment proceedings against Milo B. Stevens & Co., deposes and says:

Q. What, if any, official position do you hold in the Bureau of Pensions. A. Principal Examiner and assistant chief of Board of Review.

Q. How long have you held that position? A. Since November, 1899.

Q. How long have you been employed in the Pension Bureau? A. Since May 4, 1880.

Q. When and from whom, if at all, did you hear that attorneys of record in military bounty land warrant cases had procured the assignments of such warrants to them and had subsequently sold the same at a profit? A. Within the past year, when it was understood an investigation had been started in the matter.

Q. Did you, before that time, directly or indirectly, hear that any such practice existed? A. No. I knew that individuals purchased warrants to use, and that lumber companies were buying them, and things of that kind, but not attorneys of record.

Q. If it had been brought to your attention that an attorney of record had procured the warrant of his client at an inadequate price and had sold the same at a large profit, would you have considered it your duty to have taken such action as was necessary to have the matters considered by those in authority to determine what, if any action, should be taken by this Bureau. A. Had it appeared in the papers of a bounty claim coming under my attention in its adjudication in the Bureau, the same course of action would have been taken as in a pension claim where an exorbitant fee was
574 being secured by reference of the papers to the Law Division for investigation.

Q. Are you acquainted with Thomas R. Harney or Eugene E. Stevens, of the firm of Milo B. Stevens & Co.? A. I have been personally acquainted with Mr. Harney for a number of years, he having at one time been a clerk in this Bureau. I have no personal acquaintance with Mr. Stevens.

Q. Are you conscious of any ill-feeling or hostility towards either man? A. None in the least. I have always considered Mr. Harney an upright man in his dealings before the Bureau.

Q. Have you understood my questions, and have your answers been correctly recorded? A. Yes.

THOMAS H. DAWSON, *Deponent*.

Sworn to and subscribed before me this 25th day of October 1906, and I certify that the contents were fully made known to deponent before signing.

GEO. C. STEWART,
Special Examiner.

575

Deposition ———.

Case of ———, No. —.

On this twenty-fifth day of October, 1907, at Washington, in the District of Columbia, before me, George C. Stewart, a Special Examiner of the Bureau of Pensions, personally appeared Stephen A. Cuddy, who being by me first duly sworn to answer truly all interrogatories propounded to him during this special examination *re* disbarment proceedings against Milo B. Stevens & Co., deposes and says:

Q. What is your name? A. Stephen A. Cuddy.

Q. What, if any, position do you hold in the Bureau of Pensions?
A. Law clerk and acting chief of law division.

Q. How long have you held that position? A. Acting law clerk from April 27, 1897, until about June 8, 1897, when I was appointed law clerk.

Q. Are you acquainted with Thomas R. Harney, a member of the firm of Milo B. Stevens & Co? A. I am, officially.

Q. Did you have any conversation with Mr. Thomas R. Harney in your room at the Bureau of Pensions after the investigation of bounty land cases was initiated in May, 1906, with reference to the purchase and sale of bounty land warrants, and if so, about when?

A. I did. It was during the summer or fall of 1906.

Q. In substance, what did Mr. Harney state to you with reference to that matter on that occasion. A. Mr. Harney came to my desk and stated that he understood that the firm of Milo B. Stevens & Co. were under investigation for their action in connection with the purchase and sale of certain military bounty land warrants which they had secured for their clients, they having been the attorneys of record before the Bureau in procuring such warrants, and he asked

576 me what was the extent of the investigation. I told Mr. Harney that the investigation was being made, and that when it was concluded, if such action was considered proper, the firm would be fully advised as to the result and such further action would be taken in the matter as might be warranted. He stated that he understood that the Bureau considered it a violation of the fee law governing bounty land warrants for them to purchase, at a nominal price, bounty land warrants they secured for their clients and resell them, thereby making a profit. Before answering this question I called to my desk Mr. George C. Stewart, the assistant chief of the law division, and stated to him the question asked by Mr. Barney, and told him that I desired him to hear the answer made. I then answered Mr. Harney's question and told him that the Bureau did consider it a violation of law. Mr. Harney, who seemed to be considerably agitated and nearly in tears, then stated that he had never considered it so; that he had been dealing in bounty land warrants that he had secured for his clients for some time, and that it has been the practice of the firm to always purchase such warrants for

the lowest sum they could get them and to sell them for the largest amount they could obtain for them.

Q. When and how did you first learn that attorneys were procuring their clients to part with warrants which they had procured to be issued for a nominal consideration and sell them again at a profit? A. The first knowledge I had that such a practice was in existence was subsequent to May 1, 1906. Some time in May 1906, it came to my knowledge that attorneys before the Bureau who were prosecuting claims for clients for the issue of bounty land warrants, or duplicate bounty land warrants, were resorting to irregular practices, and I reported the matter to the Commissioner of Pensions, and, under his direction, instituted an investigation to determine the extent of such irregularities. Through this investigation it came to my knowledge that attorneys were dealing in the land warrants which they procured for their clients, deceiving their clients as to the actual value of the warrants, securing the assignment of the warrants to themselves, and then disposing of them at a greatly advanced price. Before that time I had no knowledge that any attorney or attorneys had or were resorting to such irregular practices.

577 Q. When knowledge of that fact reached you, what, if any, action was taken to prevent to repetition of such practices. A. The investigation then in progress as to the irregularities resorted to on the part of attorneys in securing bounty land warrants for their clients was enlarged so as to include this phase of the matter, with the result that citations were issued against the attorneys found responsible as fast as the evidence to warrant such action was submitted.

Q. In the ordinary routine of the Pension Bureau, in what division would bounty land claims be considered and acted upon? A. When filed, Mail Division; from Mail Division, if a declaration it would come to Law Division; from Law Division to the Old War & Navy Division; from the Old War & Navy Division to the Board of Review; and in case special examination was necessary, the *the* Special Examination Division. On special questions or calls, cases might come to the Law Division or to the rooms of the Commissioner, the First Deputy Commissioner, and Deputy Commissioner, and in isolated cases, where calls or requests had been made for the return of some private paper, the case would go to the Chief Clerk's room.

Q. So far as the adjudication of such claims is concerned, what divisions of the Bureau would act thereon? A. Old War & Navy Division and Board of Review, and in cases of special examination, the Special Examination Division.

Q. Have you understood my questions, and have your answers been correctly recorded? A. Yes.

S. A. CUDDY.

Sworn to and subscribed before me this 25th day of October, 1907, and I certify that the contents were fully made known to deponent before signing.

GEO. C. STEWART,
Special Examiner.

578

Deposition ———.

Case of ———, No. —.

On this twenty-fifth day of October, 1907, at Washington, in the District of Columbia, before me, John W. Hall, a special examiner of the Bureau of Pensions, personally appeared George C. Stewart, who, being by me first duly sworn to answer truly all interrogatories propounded to him during this special examination of aforesaid claim for pension, deposes and says:

Q. What, if any, official position do you hold in the Bureau of Pensions? A. Principal Examiner of the Law Division of that Bureau.

Q. How long have you been employed in the Pension Bureau? A. Continuously since August, 1879.

Q. How long have you been in the Law Division? A. Continuously since 1894.

Q. In what capacity have you acted since that date? A. As a reviewer and as acting assistant chief of division and as acting law clerk from time to time.

Q. When and how did you first hear or learn that attorneys of record had procured military bounty land warrants that they had procured to be issued to be assigned to them and to subsequently sell the same at a profit? A. In May, 1906, the Commissioner of Pensions detailed me to act as a special examiner in making an investigation to ascertain the source of the information upon which certain applications for duplicate military bounty land warrants filed in the Bureau had been based. In the course of this investigation, while examining papers in the Land Office files, I found that certain warrants in cases in which William E. Moses was the attorney of record had subsequently been assigned to Mr. Moses at a price of \$1.25 per acre and had thereafter been by him sold at much higher prices.

Q. What, if any, action did you take in the premises? A. I immediately reported developments to the Commissioner of Pensions in person, and with his consent and under his instructions prepared an order providing that such warrants should not be delivered to
579 attorneys but should be sent direct to the persons entitled thereto by registered letter only, and also examined the list of all warrants issued since January, 1901, where the records showed that the warrants had been delivered to attorneys, and prepared the cases for investigation. Two of the cases are still in the field. In all of the remainder where the evidence shows that the attorneys had resorted to such practices, I, under the instructions of the Commissioner of Pensions, prepared the letters citing such attorneys to show cause why they should not be recommended for disbarment for illegal, improper and unprofessional conduct. I never heard from any source whatever, directly or indirectly, that attorneys were resorting to such practices until this investigation started.

Q. Have you read the deposition of Stephen A. Cuddy, Law Clerk,

of the Bureau of Pensions, of even date, and what, if anything, do you remember with reference to a conversation which took place in your presence between Mr. Cuddy and Mr. Harney, a member of the firm of Milo B. Stevens & Co.? A. I have, and my recollection of the occurrence is substantially as stated by Mr. Cuddy. At that time that this conversation took place a note with reference thereto was dictated by me and signed by Mr. Cuddy and myself, and said note was placed with the papers in the jacket of Stevens & Co. and transmitted to the Department with the balance of the papers in the disbarment proceedings.

Q. Are you conscious of entertaining any prejudice or ill-feeling towards either Mr. Harney or Mr. Stevens of the firm of Milo B. Stevens & Co.? A. My only relations with Mr. Harney have been of a purely official character, and I am not conscious of any feeling whatever against him except that I believe that he took gross advantage of the confidence of his clients, and for that reason I neither respect him or his methods. I never met Mr. Stevens and, so far as I know, never saw him before yesterday, when he was present at a hearing at the Interior Department.

Q. Have you understood my questions and have your answers been correctly recorded? A. Yes.

GEORGE C. STEWART, *Deponent*.

Sworn to and subscribed before me this 25th day of October 1907, and I certify that the contents were fully made known to deponent before signing.

JOHN W. HALL,
Special Examiner.

580

Deposition ———.

Case of ———, No. —.

On this twenty-fifth day of October, 1907, at Washington, in the District of Columbia, before me, George C. Stewart, a Special Examiner of the Bureau of Pensions, personally appeared James L. Davenport, who, being by me first duly sworn to answer truly all interrogatories propounded to him during this special examination *re* disbarment proceedings against Milo B. Stevens & Co., deposes and says:

Q. What, if any, official position do you hold in the Bureau of Pensions? A. First Deputy Commissioner.

Q. When and how did you first learn that attorneys of record in claims for military bounty land warrants had secured to be assigned to them warrants which they had procured to be issued, and had subsequently sold such warrants at a profit? A. The first information I had was a contract made by Spalding & Co. in the Reading case.

Q. Can you recall the nature of that contract? A. As near as I can recollect, the attorney was to receive about one-half of what he could get for the warrant.

Q. That is to say, he was to obtain about one-half for selling a warrant actually in existence? A. Yes.

Q. Then it was not a warrant which Spalding & Co. had procured to be issued in their capacities as attorneys before this Bureau. A. It was a warrant already issued but in possession of this Bureau, in which they were appointed attorneys to obtain the return of said warrant to the heirs.

Q. Mr. Davenport, have you heard read the power of attorney to Harvey Spalding & Sons in *re* bounty land warrant 39618, act of 1850, issued to the late James M. Reading, and is that power of attorney the power of attorney to which your testimony above relates.

A. Yes.

581 Q. Are you acquainted with an attorney by the name of Parker, located in this city? A. Yes.

Q. What is his full name? A. The initials are S. S. I can't tell his first name.

Q. Have you any knowledge that he secured to be assigned to himself a bounty land warrant which he had secured to be issued as an attorney? A. I know he got hold of a warrant in some manner, but I don't know whether it was assigned to him or not.

Q. Do you know what became of that warrant? A. He came into the room with the warrant and the owner of the warrant and asked me what I thought he should pay for it. He mentioned some small amount and asked if I didn't think that was enough. Sitting in my office at that time was another attorney who I knew dealt in warrants. I took the warrant in my hand, called this attorney over to me, handed him the warrant, and asked him what he would pay for it. His answer was either \$4 or \$4.50 an acre. This was, as I remember, more than three times more than the price placed on it by Mr. Parker. As this conversation took place in the presence of the owner of the warrant, Mr. Parker did not get the warrant, but it was purchased by the other attorney.

Q. Then the result of your action in this matter was indirectly to obtain for the man who had the warrant its market price as you believe and to prevent Mr. Parker from obtaining the same for an inadequate consideration? A. Yes.

Q. Have you knowledge of any case in which a warrant was assigned to the attorney who procured it to be issued. A. No.

Q. Prior to the investigation of this matter, which commenced in May, 1906, did you know that attorneys of record before this Bureau were causing to be assigned to them, or for their benefit, warrants which they had procured to be issued in their capacities

582 as such attorneys? A. I did not know that the warrants were being assigned to them but I did know that there was some dealing going on in warrants, as illustrated in the Parker case.

That warrant was not assigned to Parker. As a matter of fact, after the warrant was issued by this Bureau I had no means of knowing what became of it.

Q. If it had come to your knowledge that attorneys of record before the Bureau were obtaining warrants which they procured to be issued to be assigned to them at a fraction of their real value, what, if any, action would you have taken or suggested to stop such prac-

tices? A. I should certainly have made an attempt to stop it if the law would permit me to do so, as evidenced by my trial in the other case referred to, wherein Spalding & Co. had their contract.

J. L. DAVENPORT.

Sworn to and subscribed before me this 25th day of October 1907, and I certify that the contents were fully made known to deponent before signing.

GEO. C. STEWART,
Special Examiner.

583

Deposition ———.

Case of ———, No. —.

On this twenty-fifth day of October 1907, at Washington, in the District of Columbia, before me, George C. Stewart, a Special Examiner of the Bureau of Pensions, personally appeared L. M. KELLY, who, being by me first duly sworn to answer truly all interrogatories propounded to him during this special examination *re* disbarment proceedings against Milo B. Stevens & Co., deposes and says.

Q. What, if any, official position do you hold in the Pension Bureau? A. I am Deputy Commissioner of Pensions.

Q. How long have you held that position? A. I have held that position over ten years; eleven years next April.

Q. When, if at all, did you first hear that attorneys of record before this Bureau had secured the assignment to themselves of warrants which they had procured to be issued and sold them at a profit? A. I can't tell exactly when. It was not a great while ago. I can't place the exact date, but it was at about the time of the investigation started and my attention was called to it by the officers of the Bureau who had charge of the investigation. I never heard of it before.

Q. Are you personally acquainted with either Thomas R. Harney or Eugene B. Stevens, members of the firm of Milo B. Stevens & Co. A. I may have met them, but I don't know. I wouldn't know them if I should meet them.

Q. Have you understood my questions and have your answers been correctly recorded? A. Yes.

L. M. KELLEY.

Sworn to and subscribed before me this 25th day of October 1907, and I certify that the contents were fully made known to deponent before signing.

GEO. C. STEWART,
Special Examiner.

584

Deposition ———.

Case of ———, No. —.

On this 28th day of October, 1907, at Washington, District of Columbia, before me, George C. Stewart, a Special Examiner of the Bureau of Pensions, personally appeared CALVERT NEILSON, who being by me first duly sworn to answer truly all interrogatories propounded to him during this special examination *re* disbarment proceedings against Milo B. Stevens & Co., deposes and says:

Q. What, if any, official position do you hold in the Bureau of Pensions? A. Principal Examiner on duty in the office of the Commissioner.

Q. How long have you been employed in the Bureau? A. Since 1882.

Q. In what capacities have you been employed? A. I have been in the Special Examination Division, Old War & Navy Division and Board of Review.

Q. What, if any, work do you perform in connection with bounty land cases? A. All claims for bounty land that are approved by the Board of Review come to the Commissioner's Room for examination and approval before the warrants are issued and I review them for the Commissioner.

Q. How long have you performed this work? A. For two or three years.

Q. In performing these duties have you come into contact with attorneys or persons interested in such cases? A. No sir.

Q. Have you at any time or from any person known or heard that attorneys of record before the Bureau were securing assignments to them or in their favor of warrants which they had procured to be issued for a fraction of their real value and subsequently selling the same at a profit? A. No sir; not until after this investigation was under way.

Q. Are you acquainted with either Thomas R. Harney or Eugene E. Stevens? A. No sir. So far as I know I never spoke to either of them.

585 Q. Have you understood my questions, and have your answers been correctly recorded? A. Yes.

CALVIN NEILSON.

Sworn to and subscribed before me this 29th day of October 1907, and I certify that the contents were fully made known to deponent before signing.

GEO. C. STEWART,
Special Examiner.

586

RESPONDENT'S EXHIBIT No. 25.

Filed June 9, 1908.

D-356.

MU. GWW. G. B. G. F. W. L. G. B. G.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *May 1, 1908.*

The Commissioner of Pensions.

SIR: Your letters have been received recommending that Eugene E. Stevens and Thomas R. Harney of Washington, D. C., be disbarred from practice before the Pension Bureau for unprofessional conduct, for which they have been cited to show cause by you and have submitted an unsatisfactory answer.

After careful consideration of your recommendation, the testimony in the case, the arguments of counsel, and the authorities cited by them, I am convinced that the said Eugene E. Stevens and Thomas R. Harney have transacted with their clients a business which is clearly incompatible with their obligations as attorneys, and with the laws, rules and regulations under which they were recognized and permitted to represent claimants before this Department and its bureaus. The circumstances in this case are not such as to warrant their continued recognition as attorneys, and it is, therefore, hereby ordered that the said Eugene E. Stevens, Thomas R. Harney, and the firm of Milo B. Stevens & Co., be no longer recognized as attorneys or agents in the prosecution of any claim or other matter before this Department or any of its bureaus or offices.

The papers appertaining to the files of your office are herewith returned. You will inform Messrs. Stevens and Harney of this action.

Very respectfully,
(Signed) JAMES RUDOLPH GARFIELD,
Secretary.

587

RESPONDENT'S EXHIBIT No. 26.

Filed June 9, 1908.

Z. S. GWW. F. W. L. G. B. G. G. B. G.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, *May 6, 1908.*

The Commissioner of Pensions.

SIR: By departmental order of May 1, 1908, Milo B. Stevens, Eugene E. Stevens and Thomas R. Harney, doing business under the name of Milo B. Stevens & Co., of Washington, D. C., were disbarred from further practice before this Department, its bureaus and offices.

After conference with you and upon suggestion of counsel for these parties that the immediate execution of this order will do them irreparable and unnecessary injury, will work great hardship upon a number of people employed by them and upon many clients the prosecution of whose claims would be thereby interrupted, I have to direct that full execution of said order be postponed until June 1, 1908. In the meantime, said attorneys will be recognized for the purpose of adjusting and closing cases in which they have heretofore entered their appearance before any bureau of this Department, but they will not be further recognized to present any new matter or claim.

Very respectfully,
(Signed) JAMES RUDOLPH GARFIELD,
Secretary.

588

RESPONDENT'S EXHIBIT No. 27.

Filed June 9, 1908.

*Assignment of Attorneyship.*DISTRICT OF COLUMBIA, *City of Washington*, ss:

Know all men by these presents, That we, Eugene E. Stevens and Thomas R. Harney, of Washington, D. C., comprising the firm of Milo B. Stevens & Co., of Washington, D. C., Cleveland, Ohio, Chicago, Ills. and Detroit, Mich., attorneys before the Department of the Interior, for valuable consideration, have sold, transferred and assigned, and by these presents do sell, transfer and assign, to John A. Bommhardt of Cleveland, Ohio, Frank D. Fawcett of Washington, D. C., and Harry G. Batchelor of Chicago, Ills., comprising the firm of Bommhardt & Co., of Cleveland, Ohio, Washington, D. C., Chicago, Ills. and Detroit, Mich., its successors and assigns, all right and interest of said Milo B. Stevens & Co., as attorneys of record, in the legal fees appertaining to, and to become payable out of, any and all pension claims before the Bureau of Pensions, and claims before the several offices or bureaus of the Treasury Department in which we, Milo B. Stevens & Co., if entitled to recognition as attorneys of record in the allowance of said pension or other claims, would have been entitled to a fee; and have substituted and by these presents do substitute the aforesaid Bommhardt & Co., their successors and assigns, in our place and stead as attorneys of record in respect to each and all of said claims.

In witness whereof we have hereunto set our hands this 19th day of May, 1908.

(Signed)

MILO B. STEVENS & CO.,
By EUGENE E. STEVENS AND
THOMAS R. HARNEY.

In the presence of
JOHN T. MEANY.
MAX A. SCHMIDT.

Be it known, That on the day above written, personally appeared before me the above named Eugene E. Stevens and Thomas R. Harney, comprising the firm of Milo B. Stevens & Co., as attorneys of record before the Department of the Interior, and also before the U. S. Treasury Department, who, having in the presence of the two attesting witnesses subscribed to the foregoing, acknowledged the same to be their free act and deed.

(Signed)
[SEAL.]

JOHN T. MEANY,
Notary Public, D. C.

589

RESPONDENT'S EXHIBIT No. 28.

Filed June 9, 1908.

817 14TH STREET N. W.,
WASHINGTON, *June 1, 1908.*

Hon. Commissioner of Pensions.

SIR: In accordance with the verbal suggestion made us today at the Bureau we have to state that we have purchased for a stipulated price and are sole owners of the files, records, etc., pertaining to the claims business of Milo B. Stevens & Co., and neither Messrs. Stevens & Co., nor any member of that firm has any interest therein nor in prospective fees therefrom.

We have formed a partnership under the firm name and style of Bommhardt & Co., with offices for the present at Washington, Chicago, Cleveland, and Detroit, and we are the only persons having any partnership interest in the said firm.

Very respectfully,
(Signed)

JOHN A. BOMMHARDT.
FRANK D. FAWCETT.
HARRY G. BATCHELOR.

590

RESPONDENT'S EXHIBIT No. 29.

Filed June 9, 1908.

G. C. S. D/356.

JUNE 3, 1908.

Eugene E. Stevens and Thomas R. Harney, Milo B. Stevens & Co.,
Washington, D. C.

SIRS: This Department declines to recognize as valid a power of substitution jointly executed by you on May 29, 1908, in favor of John A. Bommhardt, of Cleveland Ohio, Frank D. Fawcett, of Washington, D. C., and Harry G. Batchelor, of Chicago, Illinois, on the ground that you were disbarred from practice before this Department on May 1, 1908, the effect of the supplement order of May 6, 1908, being simply to provide that you should be recognized up to June 1, 1908, in claims and matters in which you were the attorneys of record on the date of your disbarment, and not to cancel or set aside the order of disbarment of May 1, 1908, and hence

that on May 29, 1908, the date of the execution of the power of substitution, you were not in good standing as practitioners before this Department and had no status to execute a valid power of substitution.

The question of attorneyship in each individual case in which you were the attorneys of record on the date of your disbarment must necessarily be determined under the rules of practice with reference to such matters, and this Department must necessarily recognize the legal right of each claimant to appoint such attorney as he or she may desire to continue the prosecution of any such claim.

Very respectfully,
(Signed)

FRANK PIERCE,
Acting Secretary.
G. W. W.

591 Supreme Court of the District of Columbia.

MONDAY, July 6, 1908.

Session resumed pursuant to adjournment, Mr. Justice Wright, presiding.

* * * * *

At Law. No. 50621.

THE UNITED STATES *ex Relatone* EUGENE E. STEVENS, THOMAS R. HARNEY, MARTHA G. HARNEY, and EVELYN STEVENS, by MARTHA G. HARNEY, Her Guardian, Petitioners,

vs.

JAMES R. GARFIELD, Secretary of the Interior of the United States, Respondent.

This cause coming on to be heard upon the petition, the amended answer, and the demurrer thereto, and the case being submitted to and considered by the Court, and it appearing to the Court that the demurrer was sustained on July 3rd, 1908, it is this 6th day of July, A. D. 1908, Ordered that the writ of mandamus forthwith issue to James Rudolph Garfield, the Secretary of the Interior as prayed for in the petition herein commanding him to vacate the order of disbarment of May 1, 1908, and to restore the relators Eugene E. Stevens, Thomas R. Harney, and the firm of Milo B. Stevens & Company to practice as attorneys before the Department of the Interior, its bureaus and offices, and that the relators recover their costs against the Respondent and have execution thereof.

WRIGHT, *Justice.*

The respondent notes an appeal to the Court of Appeals of the District of Columbia.

592 Supreme Court of the District of Columbia.

WEDNESDAY, *July* 8, 1908.

Session resumed pursuant to adjournment, Mr. Justice Wright presiding.

* * * * *

At Law. No. 50621.

THE UNITED STATES *ex Relatione* EUGENE E. STEVENS, THOMAS R. HARNEY, MARTHA G. HARNEY, and EVELYN STEVENS, by MARTHA G. HARNEY, Her Guardian, Petitioners,

vs.

JAMES R. GARFIELD, Secretary of the Interior of the United States, Respondent.

Upon motion of the petitioners in open Court it is ordered that the penalty of the bond on appeal noted herein to the Court of Appeals of the District of Columbia, to act as a Supersedeas, be, and hereby is fixed in the sum of Fifty thousand dollars, (\$50,000).

From the foregoing the Respondent notes an exception.

593 *Writ of Mandamus.*

Issued July 8, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50621.

THE UNITED STATES OF AMERICA *ex Relatione* EUGENE E. STEVENS, THOMAS R. HARNEY, MARTHA G. HARNEY, and EVELYN STEVENS, by MARTHA G. HARNEY, Her Guardian, Relators,

vs.

JAMES RUDOLPH GARFIELD, Secretary of the Interior of the United States, Respondent.

The President of the United States to James Rudolph Garfield, Secretary of the Interior of the United States, Greeting:

Whereas, lately, in the Supreme Court of the District of Columbia, the Relators, by their counsel, filed their petition for the writ of mandamus to be directed to you, requiring and commanding you to vacate the order of disbarment of the Relators, of date the First day of May, A. D. 1908, and to restore the Relators to practice as attorneys before the Department of the Interior, its bureaus and offices, and the said cause having come on to be heard by the Court upon the said petition, the rule to show cause issued thereon, the amended Answer of the Respondent, and the demurrer of the Relators thereto,

and each and every pleading hereinbefore filed in the said case, and having been argued by counsel,

On consideration whereof, it was adjudged and ordered by the said Court, on the 6th day of July, A. D. 1908, that the said writ of mandamus forthwith issue.

594 Therefore, you are hereby peremptorily commanded and enjoined that, immediately after the receipt of this writ, and without further delay, you vacate the said order of disbarment and restore the said Relators to practice as attorneys, as aforesaid;

And this you are not to omit, and how you shall have obeyed and executed this writ make known to the Court within twenty days from the date hereof by returning the same into the Clerk's Office, properly endorsed.

Witness, The Honorable Harry M. Clabaugh, Chief Justice of said Court, this 8th day of July, A. D. 1908.

[SEAL.]

J. R. YOUNG, *Clerk.*
By ALF G. BUHRMAN,
Ass't Clk.

Marshal's Return.

Served copy of the within writ on Frank Pierce acting Secretary of the Interior.

July 8, 1908.

AULICK PALMER, *Marshal.*
H.

(Endorsed:) In the Supreme Court of the District of Columbia. Eugene E. Stevens *et al.* Relators, *vs.* James R. Garfield, Sec'y of the Int. At Law. No. 50621. Frank Pierce, Acting Sec'y, asks leave for return of writ.

595 DISTRICT OF COLUMBIA, ss:

Frank Pierce, being duly sworn, says that in the absence of James Rudolph Garfield, Sec'y of the Int. he is the Acting Sec'y of the Int., and that the within copy of the writ of mandamus was on July 8, 1908, at 11.30 a. m., left with him, and in view of the order by the Court of App. of the Dist. of Columbia in this cause, upon his petition for a special appeal from the orders of this Court requiring James Rudolph Garfield, Sec'y of the Int. to file supersedeas bonds which order provides for the stay and execution of the writ and all other proceedings in this Court without bond, he now asks leave of this honorable Court to return the within copy of the writ left with him and that pending the determination of the several appeals in this cause by the Court of App. he be relieved from further report or action thereunder.

FRANK PIERCE.

Subscribed and sworn to before me this 27th day of July, 1908.

[SEAL.]

EDWD. B. FOX,
Notary Public, D. C.

596

Filed July 13, 1908.

In the Supreme Court of the District of Columbia, the 13 Day of
July, 1908.

At Law. No. 50621.

U. S. *ex Rel.* STEVENS ET AL.*vs.*

JAMES RUDOLPH GARFIELD, Secretary, etc.

The Clerk of said Court will please take notice that the appeal prayed and taken herein on the 6th day of July, 1908, from the order granting the writ of mandamus, by the Respondent, is taken by direction of the Attorney General of the U. S. and by the Secretary of the Interior and is to be treated in all respects as an United States case.

DANIEL W. BAKER,
U. S. Attorney.
GEORGE W. WOODRUFF,
Ass't Att'y Gen. Int. Dept.,
For Respondent.

597 *Respondent's Directions to Clerk for Preparation of Record.*

Filed July 30, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50621.

UNITED STATES OF AMERICA *ex Rel.* EUGENE E. STEVENS ET AL.,
Relators,*vs.*

JAMES RUDOLPH GARFIELD, Respondent.

The following pleadings and papers are hereby designated by counsel for respondent as the record to be made and filed in the Court of Appeals for the District of Columbia in the appeal prayed and taken herein from the judgment of the Supreme Court of the District of Columbia under date of July 6, A. D. 1908, sustaining the demurrer of relators to the amended answer and directing the writ to issue:

1st. The petition for writ of mandamus, with exhibits.

2nd. The rule to show cause.

3rd. The amended answer of respondent to said rule, with exhibits.

4th. The demurrer of relators to said amended answer.

5th. The judgment sustaining the demurrer and directing the writ to issue.

6th. The order of the Supreme Court requiring supersedeas bond of Fifty Thousand (\$50,000.) Dollars to be furnished by respondent.

598 7th. Exception of respondent to said order.

8th. The prayer of appeal and suggestion that the appeal is taken by directions of the heads of the departments and is, and is to be treated as, an United States case.

9th. This order.

Service of copy of above accepted this 28th day of July, A. D. 1908.

BARNARD & JOHNSON,
HENRY E. DAVIS,
WM. T. S. CURTIS,
Att'ys for Relators.

599 *Relators' Directions to Clerk for Preparation of Record.*

Filed July 30, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 50621.

UNITED STATES OF AMERICA *ex Rel.* EUGENE E. STEVENS ET AL.,
Relators,
vs.

JAMES RUDOLPH GARFIELD, Secretary of the Interior, Respondent.

The following is hereby designated by attorneys for the relators as a part of the record to be made and filed in the Court of Appeals of the District of Columbia on the appeal prayed and taken herein on the judgment of the Supreme Court of the District of Columbia, under date of July 6, 1908, sustaining the demurrer of the relators to the amended answer and directing the writ to issue, to wit, the writ of mandamus issued on the 8th day of July, 1908, and the return thereto of the Marshal.

HENRY E. DAVIS,
WM. T. S. CURTIS,
BARNARD & JOHNSON,
Attorneys for Relators.

Service of above and copy accepted this 30 day of July, 1908.

STUART McNAMARA,
For Respondent.

600

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 599 both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copies of which are made part of this transcript, in cause No. 50621 At Law, wherein The United States on the relation of Eugene E. Stevens, *et als*, are Relators and James R. Garfield, Secretary of the Interior, is Respondent, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 13th day of August, A. D. 1908.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk*,
By ALF G. BUHRMAN, *Ass't Clerk*.

Endorsed on cover: District of Columbia supreme court. No. 1941. J. R. Garfield, Sec'y, &c., appellant, *vs.* The U. S. of A. *ex Rel.* Eugene E. Stevens *et al.* Court of Appeals, District of Columbia. Filed Aug. 14, 1908. Henry W. Hodges, clerk.

OCT 30 1908

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1908.

No. 1941, Special Calendar No. 19; No. 1930,
Special Calendar No. 10; No. 1934, Special
Calendar No. 14.

JAMES RUDOLPH GARFIELD, SECRETARY OF THE
INTERIOR, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, UPON THE
RELATION OF EUGENE E. STEVENS, THOMAS
R. HARNEY, MARTHA R. HARNEY, AND EVE-
LYN STEVENS BY MARTHA G. HARNEY, HER
GUARDIAN.

Reply to Supplemental Brief for Appellees.

DANIEL W. BAKER,
United States Attorney.

STUART McNAMARA,
Assistant United States Attorney.

GEORGE W. WOODRUFF,
Assistant Attorney-General
Interior Department,

F. W. CLEMENTS,
First Assistant Attorney
Interior Department,
Of Counsel.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1908.

No. 1941, Special Calendar No. 19; No. 1930, Special Calendar No. 10; No. 1934, Special Calendar No. 14.

JAMES RUDOLPH GARFIELD, SECRETARY OF THE
INTERIOR, APPELLANT,

vs.

THE UNITED STATES OF AMERICA, UPON THE
RELATION OF EUGENE E. STEVENS, THOMAS
R. HARNEY, MARTHA R. HARNEY, AND EVE-
LYN STEVENS BY MARTHA G. HARNEY, HER
GUARDIAN.

Reply to Supplemental Brief for Appellees.

With leave of the court, counsel for appellant make a brief reply to the supplemental brief for appellees.

The brief covers no new ground, but in its effort to place a strained construction on certain parts of the record by isolating these parts from the rest so that their proper bearing on the whole is lost, it presents some statements to which counsel for appellant have deemed it advised to make a brief reply.

I.

On pages 3 and 5 of the brief, it is stated that the averments of appellant's answer in the court below, to the effect that prior to the issuance

of the citation it was not known who would be accused or put upon trial, are erroneous. Of course, on this record before this court, the averments of the answer must stand as admitted by the demurrer. But apart from that, it is true beyond successful dispute that prior to the issuance of the citation herein it was not known who would be put upon trial. Before that time there was no disbarment proceeding. The Department was not proceeding against any one, whether Stevens, Harney, or any other individual or firm. The Department was maintaining an administrative investigation into the affairs of its Bureau of Pensions. The very statement of Acting Chief Cuddy, of the Law Division (Rec., p. 316), which counsel for appellees seek to distort into the statement that the appellees were being proceeded against, corroborates and confirms the averments of the answer, by showing that there was a general investigation into the practice of attorneys trading in military bounty land warrants, and that when it was concluded, if deemed proper, disbarment proceedings would be instituted and the appellees would be properly notified. Acting Chief Cuddy says:

"That the investigation was being made, and when it was concluded, if such action was considered proper, the firm would be fully advised as to the result and such further action would be taken in the matter as might be warranted."

This is precisely what the answer states in other terms. The Bureau of Pensions was acting as a grand jury. It might well be that the result of its deliberations would be a judgment that there was no ground for putting the persons who are discovered to be involved in these transactions upon trial for disbarment. In this case no citation would be issued. The firm would be notified accordingly. On the other hand, the result of

the investigation of the Bureau of Pensions might be the official belief that there was reasonable ground to accuse the appellees of improper practices and put them upon their trial for disbarment.

This was the actual fact. Then it was known for the first time that these appellees should be called upon to answer. The citation was prepared and issued. Then the appellees were properly notified by the service of the citation, and the other proceedings followed. There can be no success in the attempt to change the statement of Cuddy that this *general investigation* was going on into the statement that the Department was proceeding against individual attorneys for the purpose of disbarment.

II.

On page 6 of the brief something is said with respect to the charge in the citation of withholding the warrants of the clients. It is stated that not only did the appellees not admit that they withheld warrants, but that they did not in any instance withhold the warrants when they were obtained. The charge of withholding the warrants, and the admission of the appellees that the said warrants were withheld because in their dealings with their clients to buy the same the delivery of the warrants was out of mind altogether, are too fully discussed in the brief and are too evident from the record for any additional comment here. It is impossible that the appellees fail to perceive that in the eye of the law the warrants were never delivered to their clients. The act of July 4, 1884, in section 4, forbids any bargaining by an attorney with his client for greater compensation than the act allows, or the withholding by the attorney of the warrant issued to the client. If the attorney improperly purchased the warrant, giving his client an inadequate price therefor, and thus improperly retained the warrant, it is plain that the

warrant has never been legally delivered to the client, and it is therefore withheld in the contemplation of the act.

III.

On page 13 there begin certain remarks with respect to "whether there was such an admission by the appellees of the charges against them as to dispense with the necessity of due process of law." It is not the contention of the appellant that due process of law was dispensed with; but that it was had. The contention was and is made that the charges in the citation were admitted by the answer, and by the action of the appellees themselves, when in their defense and as part of their defense, they proceeded directly to undo what the citation charged they had done, by refunding to their clients the profit they had made in buying the warrants at the prices the citation named and selling the warrants thereafter at the prices the citation named. The appellees also filed affidavits as to the adequacy of the prices and denied only the question of intent and the fact that the mere buying of the warrants at the prices specified and selling them thereafter at the prices also specified was such conduct as would condemn them to disbarment. With that argument they also contended that they had made full restitution to their clients, and that at all events they were not such attorneys as should bring them within the doctrine of the proper conduct of attorney to client recognized by the law. It is utterly vain for the appellees to seek escape from the position of admitting the charges in the citation, which the record shows they boldly assumed at the outset, and attempted to justify.

The dissertation in the brief about the exact character of the conduct of the appellees in procuring the warrants and thus making a profit out of the fruit of their own

services for the clients, is beside the case. Whether the appellees should be dealt with severely is a question relating to the question of punishment. The question of punishment and its measure is one for the Secretary of the Interior and not for the court to consider.

It is also said that the fact of the adequacy of the prices was in dispute, and as to this the appellees were entitled to go to proof. The answer is that they did go to proof. They filed their affidavits as to the adequacy of the prices they paid and the impossibility of knowing the exact prices of the warrants. But as against this was the counterproof their own conduct afforded, in showing that in every instance the price which was paid for the warrant was from eleven to six hundred per cent lower than the price they received for it. This did not happen as an accident in one case, as a coincidence in two cases, or as a fortuity in three cases. It happened regularly and inevitably, as the result of system and design. It occurred in twenty-two cases. And the appellees themselves accumulated six thousand eight hundred and forty-one dollars and ninety-five cents (\$6,841.95), by what they would now innocently tell the court was the tyranny of accident—not the logic of design. Surely it may not lack propriety or respect for a famous thought to use its paraphrase here and say we should rather believe all the fables in the Alcoran and the Talmud than believe that this universal scheme was without a mind.

IV.

Considerable space is given in page 22 et seq. of the brief to the quotation of certain parts of the report of the Commissioner of Pensions. It is stated plausibly that this was the testimony in the case used in the disbarment proceedings. The answer states positively that there was no testimony in the case, and that these depositions

were all taken before the citation, and that the disbarment proceedings began with the citation. As stated before, this is admitted on demurrer. The Secretary did not need this testimony for the reason of the admissions of the appellees hereinbefore discussed. The Commissioner of Pensions forwarded his recommendations, including the depositions taken before it, giving to the Secretary of the Interior an official report of the whole matter of the investigation leading up to the citation, which was issued thereafter and thereupon. Consequently, all the many repeated lists of individuals who testified are those who testified in the general investigation. All these were out of the case when the citation was issued and the citation was the only accusation which the appellees were called upon to answer and which in fact they did answer.

The depositions, therefore, used in the general investigation were not needed by the Secretary. But what if he had admitted this testimony? What if he made a mistake in the ruling? As a fundamental principle of law, the action of the Secretary in admitting or excluding evidence, in a proceeding over which he has jurisdiction, is not such an act as would be jurisdictional so that this court might entertain it for review.

DANIEL W. BAKER,
United States Attorney.

STUART McNAMARA,
Assistant United States Attorney.

GEORGE W. WOODRUFF,
Assistant Attorney-General
Interior Department,

F. W. CLEMENTS,
First Assistant Attorney
Interior Department,
Of Counsel.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1908.

No. 1941.

No. 19, Special Calendar.

GARFIELD, SECRETARY, ETC., APPELLANT,

vs.

UNITED STATES EX REL. STEVENS ET AL.

PETITION FOR REHEARING.

HENRY E. DAVIS,
WILLIAM T. S. CURTIS,
RALPH P. BARNARD,
GUY H. JOHNSON,
Attorneys for Appellees.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1908.

No. 1941.

No. 19, Special Calendar.

GARFIELD, SECRETARY, ETC., APPELLANT,

vs.

UNITED STATES EX REL. STEVENS ET AL.

PETITION FOR REHEARING.

Come now the relators, by their attorneys, and move the court to grant a reargument of the above-entitled cause for the reasons hereinafter set forth and appearing:

In the court's opinion are found the following statements:

1. "The first point raised on the charge of the petition that the proceeding was not in accordance with due process of law is, that the *charge* against the relators is founded on depositions taken *ex parte*, and without their knowledge. The formal and regular way to proceed in such cases is to found the charges upon which the attorney is cited to show cause why he should not be disbarred, upon an affidavit stating the facts. *Ex parte* Wall, 107 U. S., 265, 271. But such affidavits are necessarily *ex parte*. In no proceeding before the courts has it ever been held that the party charged with the offense should have notice

of taking the affidavit and an opportunity to controvert it in advance. It is merely the foundation of the charge which he is called upon to meet. *Using it for that purpose, and using it as proof of the charge on the trial are very different things.* The Commissioner had the right to make investigations regarding the practices before his office, and to use facts so ascertained as the basis of a formal proceeding to disbar an attorney. Upon the charges so made, *if not admitted*, he is not empowered to prosecute to judgment, *save upon evidence submitted in the usual way with opportunity to the accused to hear and examine the witnesses, and to introduce proofs on his own behalf.*"

2. "The contention is that the respondent exceeded his jurisdiction and proceeded without due process of law in two particulars.

"(1) Without notice to relators, or opportunity to be confronted with the witnesses, the Secretary made an *ex parte* investigation of the charge in the answer that the practice of attorneys in buying the warrants of their clients had long been known to the officers of the Pension Bureau, had been acquiesced in, and had grown into a usage, which relieved their conduct of any taint of illegality or impropriety. The answer admits that this investigation was privately made, but avers that it was for the sole purpose of acquiring information by the Secretary as to the conduct of the officials of the bureau in such matters; and that the Secretary held as matter of law, that the alleged facts, if true, constituted no ground of defense to, or justification of such practices. . . .

"(2) The mass of depositions taken by the Commissioner in the course of the preliminary investigation before referred to, as required by the regulations (sec. 9), accompanied his report made to the Secretary. The charge is that the Secretary considered the same as evidence in arriving at his decision disbarring the relators, and that his con-

clusion was in part founded thereon. *This charge was flatly denied in the Secretary's answer. He states explicitly that no evidence was taken or considered save such as was contained in the answer of the relators to the charges against them, and exhibits appended thereto, because, in his judgment, the answers contained a substantial admission of the specifications of the charge, thereby rendering unnecessary the taking of any evidence in their support. This allegation is also admitted by the demurrer. It is contended, however, that the consideration of this evidence is shown by the Secretary's final action of May 1, 1908, wherein he directs the Commissioner of Pensions to no longer recognize relators as attorneys, in the following paragraph thereof: 'After careful consideration of your recommendation, the testimony in the case, the arguments of counsel and the authorities cited by them I am convinced, etc. The denial of the answer is not inconsistent with this record, for it says that the testimony was contained in the admissions of and exhibits to the answer, and none other was heard or considered.* . . .

"Evidently the Secretary considered that the evidence, direct and circumstantial, furnished by the answer and its exhibits, sustained the charge." . . .

1. The statement that there is any point made by the petition "that the *charge* against the relators is founded on depositions taken *ex parte* and without their knowledge" is inadvertent. The allegations of the petition are that—

"none of the relators was afforded or allowed opportunity to be confronted by the witnesses produced in support of the said charges, or to cross-examine the said witnesses, or refute their testimony by testimony produced in opposition to the testimony of such witnesses; . . . the so-called testimony relied upon in support of the

said charges is and was in direct disregard of the said rules and law of evidence; . . . and by reason of the premises, respondent has assumed to deprive relators of their offices . . . without due process of law and in violation of their lawful rights" (Rec., pp. 5-6).

It is not denied in behalf of the relators that the Commissioner of Pensions had the right to prefer charges against them, whether based upon affidavits previously taken or not, or, indeed, upon any information or even surmise which, in the opinion of the Commissioner, might have been thought sufficient to justify him in making charges; the complaint of the relators is that, if the Commissioner did, as in fact he did, take depositions before presenting the charges, he had no right to use those depositions, if taken *ex parte*, as testimony to support the charges after made; and the court, in its opinion, recognizes this by saying (referring to an assumed *ex parte* affidavit used by the Commissioner as the foundation of a charge):

"Using it for that purpose, and using it as proof of the charge on the trial are a very different things. . . . Upon the charges so made, if not admitted, he is not empowered to prosecute to judgment, save upon evidence submitted in the usual way, with opportunity to the accused to hear and examine the witnesses, and to introduce proofs on his own behalf."

2. And, as respects the very heart of the case, the court has manifestly been governed by the conviction that the so-called preliminary depositions were not used as proof of the charges after their making.

We use the expression "so-called preliminary" in full appreciation of the deference due the court; but, as pointed out in the supplemental brief for appellees (p. 3), Cuddy, law clerk and acting chief of law division

of the Bureau of Pensions, specifically testified (Rec., p. 316) that in the summer or fall of 1906, months before the citation was issued, one of the relators told him, Cuddy, that he understood that the relators—

“were under investigation for their action in connection with the purchase and sale of certain military bounty land warrants which they had secured for their clients,”

and that he, Cuddy, told the relator referred to—

“that the investigation *was* being made, and that when it was concluded, if such action was considered proper, the firm (the relators) would be fully advised as to the result, and such further action would be taken in the matter as might be warranted.”

And, as further pointed out in the same brief (p. 27), at least one of the warrantees, Mrs. Eaton, testified as to matters post-dating May 13, 1907, wherefore her deposition must have been taken after that date, whereas the citation was issued April 13, 1907; and in the very deposition in which this warrantee was thus testifying to matters post-dating the citation, is to be found the only statement by her directly attempting to give the impression that she had been deceived by the relators.

But, passing the question whether the depositions under consideration were or were not “preliminary,” and returning to the question whether those depositions were or were not used as proof of the charges after their making, the court, in its opinion, as above quoted, says:

“The charge is that the Secretary considered the same as evidence in arriving at his decision disbarring the relators, and that his conclusion was in part founded thereon. This charge was flatly denied in the Secretary’s answer. He states explicitly that no evidence was taken or considered save such as was contained in the answer

of the relators to the charges against them and exhibits appended thereto, because, in his judgment, the answers contained a substantial admission of the specifications of the charge, thereby rendering unnecessary the taking of any evidence in their support . . . The answer . . . says that the testimony was contained in the admission of and exhibits to the answer, and none other was heard or considered."

Passing the fact, already noted, that a deposition of at least one of the warrantees was taken after the citation (and the further fact that, as none of the depositions is set forth by the Commissioner in his report to the appellant, it is impossible to say from the record whether there were or were not other depositions so taken), it is respectfully submitted that the court is in error in its apprehension of the appellant's answer in the particular under consideration.

The answer will be scanned in vain to find that it (1) anywhere denies that the appellant considered the depositions in question as evidence in arriving at his decision; or (2) anywhere states that no evidence was considered "save such as was contained in the answer of the relators to the charges against them and exhibits appended thereto;" or (3) anywhere "says that the testimony was contained in the admissions of and exhibits to the answer, and none other was heard or considered."

At the risk of seeming prolixity, the following portions of the answer are set forth:

"The relators . . . were charged in the citation with specific acts of misconduct therein set out fully in detail. . . . They answered the said citation and they admitted having the transactions with their clients set out in the said citation and admitted having done the specific things therein charged, but denied that, by reason thereof, they were guilty of any offense. With their answer they submitted certain evidence in

their behalf. . . . On this record it was not necessary to produce any witnesses to prove the facts, which the relators admitted in their answers and in the evidence offered in support of their answers. It became solely a question whether, on the admitted facts, the charges were sustained (*Rec.*, pp. 146-7).

"And further answering said fourteenth paragraph of the petition with respect that none of the relators was afforded or allowed an opportunity to be confronted with any of the witnesses produced in support of said charges or to cross-examine said witnesses or to refute their testimony by testimony produced in opposition to the testimony of such witnesses, respondent says that the same is untrue, and absolutely denies the same. Respondent says it would be impossible that the relators were denied the right to cross-examine witnesses produced in support of the said charges, *because the fact is that no witnesses were produced*, as the relators admitted all of the acts set out in said citation, as more fully above set forth. Accordingly there was no denial of the right of confrontation of witnesses, and respondent denies that relators were not allowed to refute their testimony by testimony produced in opposition, so far as the legal effect of said averment is concerned, but says that as a matter of fact there was no testimony of witnesses offered to be refuted by testimony of the relators, but that the relators did offer all the evidence they desired to answer the charges in the citation.

"In order to fully inform the court, respondent says that prior to the issuance of the citation and before the relators were charged with anything, and before it was known that they would be charged with anything, the Commissioner of Pensions caused a general investigation, which had no known relation to these relators, concerning the improper practices connected with the prosecution of military bounty land warrant claims before the Department of the Interior. In the course of this

investigation *depositions were taken in the field.* . . . After the investigation was concluded . . . the said Commissioner of Pensions issued his citation, in which citation were embodied the specific acts which the said relators were called upon to answer. This citation became the basis of the proceedings and was the only accusation made against them. Prior to this time the said relators were not under a legal charge which they were compelled to answer. Under these circumstances no notice was given relators of the taking of said depositions. When they were charged by the issue and service of the citation they then made their response, admitting the purchase by them of warrants as alleged in the citation, but denying any wrongful intent, purpose or knowledge in so doing, and denying their liability in law to the charges contained in the citation. Upon receipt of the said response of the relators the said Commissioner of Pensions . . . upon full consideration of the said response and the whole record, *including the aforesaid depositions so as aforesaid taken before the said citation,* . . . recommended to the Secretary of the Interior that the said relators be disbarred . . . Thereafter, having fully reconsidered the case, including the additional evidence which the relators desired to and did submit, . . . the said Commissioner of Pensions returned his recommendation for disbarment to the Secretary of the Interior, reaffirming his former recommendation. Thereafter, the Secretary of the Interior granted the said relators . . . full hearings and opportunities to be heard. At these said hearings they appeared in person and had the benefit of the assistance and arguments of counsel, and, *while objection was made in the hearing before the Secretary of the Interior that the depositions upon which the citations were issued were taken without opportunity of the reviewing officers to notice the demeanor of the deponents and without opportunity of the relators to cross-examine them, yet the*

real contention of the relators was that the acts charged and admitted by them did not fall within the law and the jurisdiction of the Secretary of the Interior to make the same the basis of an order for disbarment. . . .

"Respondent *therefore* denies every allegation in this paragraph and in the entire petition that the relators, Eugene E. Stevens and Thomas R. Harney, were denied a hearing and an opportunity to be confronted with the witnesses produced to support the charges or to cross-examine the same or to refute their testimony by testimony produced in opposition thereto; that said proceedings as above set forth were not entirely regular, and any averment in the petition to the contrary is emphatically denied. The said proceedings are set out in full Exhibits No. 1 to No. 29, inclusive, filed with the original answer, and which are incorporated herewith and made a part of this answer and to be read as part hereof the same as if they were set out within the covers of this answer. . . .

"He denies that the so-called testimony relied upon in support of the charges is and was in utter disregard of the settled rules of evidence, *because, as above set forth, it was not claimed that witnesses testified orally in support of said charges* . . . The answer of the relators did not deny the dealing by them in the warrants, as charged, although it raised the question as to the legal import of their acts in the premises, and denied any guilty intent or knowledge in the performance of such acts. . . .

"Respondent *admits that the relators were never confronted by the persons, or any of them, whose depositions were taken prior to the issuance of the citation, but he avers that there were no witnesses adduced to testify orally in support of the citation after its issuance, and, therefore, no such witnesses with whom the relator could claim the right to be confronted, or whom they could claim the right to cross-examine*" (Rec., pp. 148-152).

These are believed to be all the statements in the answer which can, by any possibility, be claimed to contain any assertion, or even intimation (1), by way of denial of the specific charge of the relators, that the appellant considered the depositions under consideration as evidence in arriving at his decision disbarring the relators, or (2), as asserting that no evidence was considered "save such as was contained in the answer of the relators to the charges against them and exhibits appended thereto," or (3), as saying "that the testimony was contained in the admission of and exhibits to the answer, and none other was heard or considered."

And how far these statements of the answer fall short of any such denial or assertions is evident at a glance; besides which, the answer, in terms, asserts that the proceedings against the relators are set out in full in the exhibits mentioned, which are made part of the answer; which exhibits, and notably that numbered nineteen (Rec., p. 225), show conclusively (as in part specifically pointed out on pp. 23-26 of the Supplemental Brief for Appellees), that the recommendation of the Commissioner, upon which the appellant acted and which he approved and affirmed, was based upon the very depositions in question, and, in no sense and to no extent, even the slightest, professed to be based, or to rest, upon any admissions of the relators; on the contrary, the Commissioner closes his recommendation with these conclusive words:

"After a careful consideration of the *voluminous testimony procured in connection with this matter* and of the answer . . . it is believed that each charge . . . is established. . . . *The entire record* is submitted for such action as you may deem proper" (Rec., p. 303);

and the appellant's action, as set forth in his answer, and made part thereof (Rec., p. 151; Ex. 25, Rec., p. 323), is in terms stated by him to the Commissioner to have

been upon "careful consideration of *your recommendation, the testimony in the case*, the arguments of counsel, and the authorities cited by them," it being nowhere and in no line nor word, intimated by the appellant that he was influenced, much less controlled, in any, the slightest, degree by any supposed admission of the relators as to any matter whatsoever. To the explicit contrary, it is to be noted that, while the Commissioner based his recommendation upon "consideration of the voluminous testimony . . . and of the answer" of the relators, the appellant altogether omits in his decision any reference to the answer, and specifically rests his judgment upon the Commissioner's "recommendation, *the testimony in the case*, the arguments of counsel, and the authorities cited by them;" a demonstration by the appellant's own act that he did not consider the answer and was not controlled by it, and that it remained for counsel to import into the case the wholly unsupported and insupportable contention relied upon in the end, namely, that it was upon the so-called admissions of the answer that the appellant judged the relators; for, obviously, if he did not consider the answer of the relators, he did not consider any supposed admissions therein contained, and, accordingly, did not and could not have rested his judgment, either in whole or in part, upon any such supposed admissions, *and he nowhere says that he did*.

And, strange as it may seem, the order in the Spalding case (Rec., No. 1951, p. 39), affirmed by the court, is identical in terms with that in this case, reversed by the court; and yet the court finds the order in that case to show that the appellant *did* consider the so-called preliminary depositions, whereas in this case it finds that he *did not*. Counsel are, most deferentially, at a loss to understand how the expression, "the testimony in the case," can be given two such diametrically opposite constructions; for matter of construction it plainly is,

seeing that in neither case does the appellant deny having considered the depositions in question.

The truth is, as counsel confidently assert, that it at no time occurred to either the Commissioner of Pensions or the appellant to condemn the relators on their supposed admissions, and that the pretense in that behalf set up and relied upon at the hearing in court was an after-thought, the palpably argumentative and not wholly ingenuous expression of which in the appellant's answer, when properly read, amounts to no more than an assertion that, had the pretense been seasonably conceived, the appellant might safely have rested his conclusion thereon; we say "safely," because, had it occurred to the appellant in deciding the matter to say, however disingenuously, in so many words, that he considered the so-called admissions alone sufficient, and for that reason had elected to determine the matter upon the citation and answer alone, and in express disregard of the depositions in question, the relators would have been powerless in any attempt to defeat his finding, for the reason stated by the court in its opinion as follows:

"From these admissions the Secretary was of the opinion that they were buying the warrants without giving information of value to their clients, were misleading them in regard to their interests, and defrauding them. . . . 'Whether he decided right or wrong is not the question.'"

Very clearly, in its opinion, the court deals with the answer of the appellant as though he had therein declared that such is what he did; but that this view of the answer is inadvertent is again respectfully urged upon the court. And it is further similarly urged that, if the court should be of opinion that, whether the appellant did or did not rest his conclusion upon the alleged admissions, the court itself may consider the

same, irrespective of all else, and base its conclusion thereon, it is impossible to escape the contention that, for the reasons pointed out in the supplemental brief for appellees, and not deemed necessary to be repeated here, the admissions are coupled with avoidances in respect of which no conclusion could have been reached by the appellant, or could be reached by the court itself, upon the record, without consideration of the testimony, so-called, personal and documentary, set forth in the Commissioner's recommendation; in a word, the testimony supposed to exist and to be manifested only through the very *ex parte* depositions which are the subject of complaint by the relators.

3. In view of the stress thereon laid at the hearing in this court, and the seeming significance given to it by the court in its opinion, counsel feel constrained to ask attention to another, and, in the light of the situation, most important feature of the case.

It was contended, and seems to have been taken for granted, that the relators had full opportunity to submit testimony in their own behalf in support of their answer to the citation. The facts in relation to this are as follows: On receipt by the Commissioner of the answer of the relators he wrote counsel as follows:

"This matter will be held in abeyance for a period of *ten days* to allow Messrs. Stevens and Harney to file such evidence *as they may possess* and may desire to offer in support of the allegations contained in their joint response to the citation" (Rec., pp. 182-3).

It will be noted that the relators were not invited to offer testimony to meet the allegations of the citation, but only to offer such "as they might possess" in support of their own allegations in the answer.

In replying to the Commissioner, counsel took due account of this situation, and in submitting certain affidavits and exhibits, accompanied the same with the following statement:

"Premising that your suggestion is in reversal of the general, and indeed universal, rule that every one accused of an offense is presumed to be innocent until the contrary be made to appear, that the burden of establishing any accusation is upon the accuser, and that the accused is under no obligation, either legal or moral, to support allegations responsive to the matters charged until some evidence to the contrary has been presented, I present for your consideration what is hereinafter set forth.

"Your suggestion does not point to the particular allegations of the answer in respect of which evidence is desired, and I am, therefore, under the necessity of collecting from the answer, in the light of the citation, the matters respecting which support by evidence is supposed to be desired *and available*. *Should it be found that I am, in any particular, mistaken and that there is any other allegation in the answer than those mentioned by me respecting which evidence is desired, I will thank you to indicate the same and will gladly submit any further evidence possible in the premises.*"

This statement was followed by the enumeration of ten allegations of the answer, to which the Commissioner's suggestion was supposed to apply, and the evidentiary matter submitted by counsel was confined to the said ten allegations. At no time were the relators invited to produce testimony to meet the allegations of the citation, and the Commissioner, as shown by his own language, realized the impossibility of the relators so doing, even if requested; for his invitation was to the relators only "to file such evidence as they might possess." And

the time within which such was to be furnished was limited to ten days.

The situation then was this: The Commissioner had in his possession the depositions of a very large number of persons taken at many places throughout the United States, which persons, not only could not possibly have been reached by the relators within the time limited, but, also, had it been possible to reach them, they could not have been compelled to testify in behalf of the relators, there being no machinery or process whereby they could even be brought to the witness stand, much less subjected to the sanction of an oath. In a word: as respects the further examination of the deponents, the relators were absolutely powerless, and this, of course, the Commissioner knew; wherefore he not only made no call for any further examination of the deponents, but, also, knew full well that any such call would be meaningless. Moreover, as the deponents had already given their depositions on the call of the Commissioner, it would have been absurd to suppose that they would voluntarily respond to any call by the relators; and, as already stated, they would have been under no compulsion so to respond.

In the light of all this, it is respectfully urged upon the court that it is unjust to the relators to treat them as though they had had an opportunity to present testimony in their behalf in the sense contended for by the appellant and by the court seemingly assumed. The simple fact is, that all that the relators had opportunity to do was to produce in support of their own affirmative allegations such testimony as they might possess, and such only; and, as is obvious, in the very nature of the case, that was practically the contents of their office files and the voluntary affidavits of such persons as they might induce to aid them with their knowledge of any of the matters involved.

In view of what is thus set forth, the conclusion seems irresistible that, not only did the appellant not condemn the relators upon their supposed admissions, but, also, that he does not, in his answer, say or undertake to say, that he did; and that the pretense that the relators had opportunity to present testimony in their own behalf, in the sense in which that pretense is set forth and urged, is wholly without foundation in fact.

Respectfully submitted.

HENRY E. DAVIS,
WILLIAM T. S. CURTIS,
RALPH P. BARNARD,
GUY H. JOHNSON,
Attorneys for Appellees.

